

# **TITLE \_\_36\_\_ Occupation, Safety, Health and CONSTRUCTION SAFETY ORDINANCE**

## **Section 1. Purpose**

- 1.0 The Business Committee of the Confederated Tribes of the Chehalis Reservation finds that construction activities inherently pose a threat to the health and safety of Reservation residents. By their nature, excavations and building of structures contain a multitude of hazards potentially resulting in injury or death to workers and even bystanders. These hazards can only be eliminated by the adoption and enforcement of regulations designed to protect health and safety. Accordingly, the Tribe hereby exercises its inherent authority to minimize the occurrence of injuries and harm to persons engaged in construction activities within the Reservation and any off-reservation lands that the Tribe owns and manages.
- 2.0 The Business Committee of the Confederated Tribes of the Chehalis Reservation further desires to define a standard of safety throughout all operations of the tribal government and its enterprises and to ensure that no employee and / or associate is required to work under any conditions that are hazardous or unsanitary and to prevent work-related injuries or illnesses.

## **Section 2. Territorial Scope**

- 2.0 This Ordinance shall apply to all lands over which the Chehalis Tribe exercises jurisdiction, including any off-reservation lands owned and managed by the Tribe.

## **Section 3. Definitions**

- 3.0 “Construction activities” includes the laying of footings and/or foundations, erection of buildings, houses, sheds, and any other above-ground structures for habitation, business use, or storage that require a building permit, but not including fireworks stands or tents. “Construction activities” also include installation of underground utilities and infrastructure, indoor and outdoor re-modeling of structures, including painting, re-roofing and re-siding.
  - a) “Director” means the Director of the Chehalis Tribe’s Planning Department.
  - b) “Chief of Police” means the Director of the Chehalis Tribe’s Public Safety Department.
  - c)
  - d) “Employer” means any person, corporation, partnership, or any other business entity, including the Chehalis Tribe.,.
  - e) “Employee” means any person hired, contracted, with or otherwise working at the behest of an employer to engage in construction, enterprise or tribal government activities.
  - f) “Inspector” means the person(s) designated by the Director to conduct work-place inspections to assure compliance with this Ordinance.

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- g) “Chehalis Tribe safety standards” are those standards adopted by the Business Committee of the Confederated Tribes of the Chehalis Reservation for the purpose of assuring the safety of employees on construction enterprise, and tribal government sites within the jurisdiction of the Chehalis Tribe. Such standards must meet or exceed the construction safety standards adopted by the federal Occupational Safety and Health Administration generally found at 29 CFR Part 1926. and 29 CFR Part 1910
- h) “Safety Plan” is a site-specific work-site plan of action addressing specific safety concerns and protection measures needed to comply with Chehalis Tribe construction safety standards. The plan will delineate the roles and obligations of employers, employees, and supervisors for meeting Chehalis Tribe construction safety standards.

**Section 4. Adoption of Safety Standards**

4.0 By this Ordinance, the Business Committee of the Chehalis Tribe adopts the construction safety standards adopted by the federal Occupational Safety and Health Administration generally found at 29 CFR Part 1926. The Director may propose and the Business Committee may approve additional safety standards, so long as such standards meet or exceed the employee protection requirements of the OSHA standards.

41. By this Ordinance, the Business Committee of the Chehalis Tribe adopts Occupational Health & Safety Standards adopted by the Occupational Safety and Health Administration generally found at 29 CFR Part 1910.

**Section 5. Duty of Employers**

5.0 Employers shall be responsible for assuring activities are conducted in compliance with Chehalis Tribe safety standards.

**Section 6. Safety Plans (Construction)**

6.0 All employers engaged in construction activities must have a safety plan in place by the time construction activities begin. Supervisors and employees must be aware of their responsibilities under the applicable safety plan. This may be accomplished by distributing the safety plan to supervisors and employees and/or holding safety meetings that address the responsibilities of supervisors and employees under the safety plan. Employers shall be responsible for assuring that employees comply with the provisions of the relevant safety plan.

6.01 Upon adoption of this Ordinance, the Director shall notify all employers actively engaged in construction activities that they are required to develop Safety Plans for each construction site, consistent with Chehalis Tribe construction safety standards. Safety Plans must be submitted prior to the commencement of

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construction activities and no later than 10 business days of issuance of a work permit or be found in violation of this Ordinance. Safety Plans must be submitted to the Director. A copy of the plan will be maintained by the Chief of Police.

6.02 The Director shall make best efforts to provide written notification to employers who do business on the Reservation from time to time regarding the requirements of this Ordinance and the obligation to have a safety plan prior to beginning construction activities.

**Section 7. Right to Inspect**

7.0 The Inspector, or any other qualified person designated by the Director, shall have the right to enter any construction, enterprise or tribal government site between the hours of 7 am and 6 pm seven days a week, unless safety concerns mandate inspection at a different time. This right of entry applies to any construction site, or other area where work is performed by an employee of an employer, for the purpose of inspecting or investigating working conditions to assure consistency with Chehalis Tribe safety standards.

7.01 A representative of the employer and a representative of employees, or other appropriate employee may choose to accompany the Inspector, but the presence of either the employer's representative or the employees' representative shall not be required in order for the inspection to occur.

7.02 In making inspections and conducting investigations, the Inspector shall have the right to question privately any employer or employee.

**Section 8. Compliance by Employees**

8.0 Each employee shall comply with the requirements of this Ordinance, any applicable construction safety plan, and Chehalis Tribe safety standards that are applicable to his/her conduct in the course of employment.

**Section 9. Reporting of Violations**

9.0 Any employee who, in good faith, believes that there is a violation of an applicable safety plan or Chehalis Tribe construction, enterprise or tribal government safety standard that threatens physical harm to one or more employees, may request an inspection of the site. Such request shall be submitted in writing to either the Director or the Inspector. The request shall describe with specificity the reasons why the employee believes that there is a violation of safety standards. The request shall be signed by the employee, except that if the employee so requests, neither his/her name nor the name of any other employee mentioned in the request shall appear in any copy of the request that is either released, published, or shown to the employer. If an employee is unwilling or unable to submit a written request, the employee may submit a request by telephone through the Chief Building Official at (360) 858-1506.

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**Section 10. Director's Duty to Investigate**

10.0 If upon receipt of a request for inspection, the Director or Inspector determines that there are reasonable grounds to believe that there may be a violation of Chehalis Tribe safety standards, the Inspector shall inspect the construction site as soon as practicable. A copy of the request for inspection, with all names redacted if so requested by the employee, shall be furnished to the employer no later than the time of inspection. If the Director or Inspector determines that there are no reasonable grounds for an inspection, then he shall notify the employee and employer in writing of that determination, and its basis. The Director shall have no obligation to provide a written response to any request submitted by telephone.

**Section 11. Violations of Chehalis Tribe Safety Standards**

11.0 If upon inspection or investigation, the Inspector determines that an a violation of the Chehalis Tribe safety standard, or the conditions of any variance granted under this Ordinance the Inspector or Director has occurred, the Inspector or Director shall notify the employer of the violation, specifically identify the safety standard violated, describe the measures necessary to remedy the violation, and identify a reasonable period of time to achieve compliance. At the discretion of the Director, which shall be guided by the seriousness of the violation and the previous record of the employer, the Notice of Violation may be either verbal or written and may include a fine that shall not exceed \$5,000.00 per day for each day that the violation persists.

**Section 12. Violations of Chehalis Tribe Safety Standards Posing an Immediate Threat to the Health or Safety of Employees**

12.0 If upon inspection or investigation, the Inspector determines that there is a violation of one or more Chehalis Tribe safety standards that poses an immediate threat of death or serious physical harm to employees, the Director shall issue a Notice of Violation to the employer. The notice of violation shall describe the specific violation and the actions necessary to cure the violation. The notice shall be given to the employer and any person involved in the violation by the Director or the Director's designee and shall also be posted at the site.

12.01 In addition, the Notice of Violation shall mandate either or both of the following actions as necessary to eliminate the threat:

- a) issue an order immediately restraining or halting the cause of the threat; or
- b) order a cessation of operations if necessary to remove or eliminate the threat.

12.02 At the Director's discretion, the Notice of Violation may also provide for a fine of up to \$5,000.00 for each day that the violation persists.

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**Section 13. Interference with an Inspector Conducting His/Her Authorized Duties**

13.0 Interference with an Inspector attempting to conduct his/her authorized duties shall constitute a violation of Chehalis Tribe safety standards and shall be handled in accordance with the Notice of Violation process described above. Such interference shall be subject to all remedies available for a notice of violation. Each instance of interference shall constitute a separate violation.

**Section 14. Right to Appeal Notices of Violation**

14.0 The Chehalis Tribal Court shall have jurisdiction to adjudicate appeals of Notices of Violation including review of fines, orders of cessation and, in addition, where requested may grant injunctive relief to protect worker safety. An employer or employee (aggrieved party) who has received a Notice of Violation has 10 business days to appeal such Notice of Violation. The notice of appeal shall be filed with the Chehalis Tribal Court. The aggrieved party shall have an additional 10 business days within which to file the arguments and supporting evidence with the Tribal Court and the Director shall file a response no later than 10 business days thereafter. During the pendency of any appeal, any order issued by the Director, for the protection of worker health and safety, other than the levying of a fine, shall be implemented or otherwise remain in place unless reversed by the Tribal Court. Upon filing a motion for a stay pending appeal, an aggrieved party may be granted a stay of the order of the Director by demonstrating irreparable harm, strong likelihood of success on the merits, and that alternative measures will provide an equivalent level of protection to employees as those ordered by the Director. Such motion must be filed within 3 business days of issuance of the Notice of Violation. The Tribe shall have 3 days in which to respond. The Tribal Court shall hold a hearing and issue its decision within 3 days of the Tribe's response to a motion for a stay pending appeal.

**Section 15. Requests for Variances**

15.0 A variance provides an approved alternative to the requirements of this ordinance as long as employees are provided with a place of equivalently safe and healthful employment. There are three kinds of variances, permanent, temporary and owner-occupied. Requests for a variance must provide the information necessary for the Director to make the required findings.

15.01 To grant a permanent variance, the Director must find that the proposed variance provides for health and safety conditions that are no less protective than those called for by Chehalis Tribe safety standards and that employees have been notified of the request.

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15.02 To grant a temporary variance, the Director must find that the employer is unable to immediately comply with Chehalis Tribe safety standards, but that the employer has an effective program for coming into compliance within a reasonable amount of time. The Director may issue a time-limited interim order pending the decision on the temporary variance request.

15.1 Variances applicable to construction activities by owners of owner-occupied residences shall be addressed through the Tribe's building permit process. This ordinance shall not apply to the circumstances under which an owner of an owner occupied residence engages in construction activities at the residence on his or her own behalf. In the event that an owner of an owner occupied residence uses the services of a contractor, that contractor must comply with the terms of this Ordinance.

**Section 16. Reporting of Fatality or Accident Information**

16.0 The employer must report injuries requiring hospitalization to the Inspector and the Chief Building Officer including name of the work place, location of the incident, time and date of the incident, number of hospitalized employees, names of injured employees, contact person and phone number and a brief description of the accident.

16.1 Fatalities must be reported to the Chehalis Chief of Police including name of the work place, location of the incident, time and date of the incident, number of fatalities, contact person and phone number and a brief description of the accident.

**Section 17. Investigation of a Fatality or Accident**

17.0 The Chehalis Chief of Police is responsible for investigation of fatalities or accidents requiring hospitalization. A copy of the investigation report will be submitted to the Director.

**Section 18. Reporting of a Complaint Against an Inspector**

18.0 Complaints from the employer regarding the activities of an authorized Safety Inspector shall be submitted in writing within 5 business days of the challenged activity to the Director. The Director will investigate all complaints regarding an authorized Safety Inspector.

**Section 19. Confidentiality – Trade Secrets**

19.0 All information reported to or otherwise obtained by the Director or Inspector, in connection with any inspection or proceeding under this Ordinance, which contains or might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this Ordinance, or when relevant in any proceeding under this Ordinance. In any such proceeding, the Director or the Court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

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**Section 20. Retaliation Against any Person Who Reports a Violation of this Ordinance**

20.0 No person shall in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any action under this Ordinance or has provided testimony in any proceeding related to this Ordinance.

20.01 Any employee who believes that he/she has been discriminated against by any person in violation of this section, may within 30 days after such violation occurs, file a complaint with the Director alleging such discrimination. Upon receipt of such complaint, the Director shall cause an investigation to be made, which shall be completed in no more than 30 days. If the Director determines that the provisions of this section have been violated, an action may be brought in Tribal Court against the person(s) alleged to have violated this section. If the Director determines that the provisions of this section have not been violated, then the employee may institute the action in Tribal Court on his/her own behalf within 30 days of the Director's determination. The Tribal Court shall have jurisdiction to restrain violations of this section and order all appropriate relief, including rehiring or reinstatement of the employee to his former position with backpay and/or to levy a fine, not to exceed \$5,000.00.

**Section 21. Sovereign Immunity**

21.0 Nothing in this title shall be deemed as a waiver of the sovereign immunity of the Confederated Tribes of the Chehalis Reservation nor shall it be deemed as authorizing a suit for damages against the tribe in any action arising under this Ordinance,

**Section 22. Severability**

22.0 Should any word, section, clause, paragraph, sentence, or provision of this title be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any other part of this title, which can be given effect without such invalid parts.