

CONSTITUTION AND BYLAWS
of the
Confederated Salish and Kootenai Tribes of the Flathead Reservation,
as amended



A People of Vision

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CONSTITUTION OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, AS AMENDED

PREAMBLE

We, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, in order to establish a more responsible organization, promote our general welfare, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to exercise certain rights of self-government not inconsistent with Federal, State, and local laws, do ordain and establish this Constitution for the Confederated Tribes of the Flathead Reservation.

ARTICLE I—TERRITORY

The jurisdiction of the Confederated Salish and Kootenai Tribes of Indians shall extend to the territory within the original confines of the Flathead Reservation as defined in the Treaty of July 16, 1855, and to such other lands without such boundaries, as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

ARTICLE II—MEMBERSHIP

Section 1. Confirmation of Rolls. The membership of the Confederated Tribes of the Flathead Reservation is confirmed in accordance with the per capita rolls as from time to time prepared.

Section 2. Present Membership. Membership in the Tribes on and after the date of the adoption of this amendment shall consist of all living persons whose names appear on the per capita roll of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, as prepared for the per capita distribution as shown on the per capita roll paid in February 1959 together with all children of such members, born too late to be included on such per capita roll and prior to the effective date of this section who possess one-fourth (1/4) or more Salish or Kootenai Blood or both and are born to a member of the Confederated Tribes of the Flathead Indian Reservation. Subject to review by the Secretary of the Interior, the Tribal Council shall make any necessary corrections in this 1959 membership roll so that no one eligible for membership under prior constitutional provisions shall be excluded therefrom.

Section 3. Future Membership. Future membership may be regulated from time to time by ordinance of the Confederated Tribes subject to review by the Secretary of the Interior. Until and unless an ordinance is adopted any person shall be enrolled as a member who shall (a) apply, or have application made on his behalf, establishing eligibility under this provision; (b) show that he is a natural child of a member of the Confederated Tribes; (c) that he possesses one-quarter (1/4) degree or more blood of the Salish or Kootenai Tribes or both, of the Flathead Indian Reservation, Montana; (d) is not enrolled on some other reservation.

Section 4. Adoption. The Tribal Council shall have the power to enact and promulgate ordinances, subject to review by the Secretary of the Interior, governing the adoption of persons as members of the Confederated Salish and Kootenai Tribes.

Section 5. Loss of Membership. Membership in the Confederated Tribes may be lost (1) by resignation in writing to the Tribal Council; (2) by enrollment of the member with another Indian tribe; (3) by establishing a legal residence in a foreign country; (4) upon proof of lack of eligibility for enrollment, or fraud in obtaining enrollment, with due notice and opportunity to be heard and to defend before the Tribal Council, subject to appeal to the Secretary of the Interior, whose decision shall be confined to the record made in such proceeding which, if supported by substantial evidence, shall be binding.

Section 6. Definitions. Wherever the term “Indian Blood” shall have been used herein or in tribal ordinances, unless the context shall require a different meaning, it shall be determined to mean the blood of either or both the Kootenai or the Salish Tribes of the Flathead Reservation.

Section 7. Current Membership Roll. The membership roll of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be kept current by striking therefrom the names of persons who have died or have lost membership pursuant to this Constitution and adding thereto the names of persons who shall have established eligibility or been adopted. The roll so prepared shall be the basis for determining the right of persons whose names appear thereon to share in annual per capita distribution of funds or in any other tribal property, subject to Secretarial approval.

Section 8. Rules of Procedure. The Tribal Council shall have the authority to prescribe rules to be followed in compiling a membership roll in accordance with the provisions of this article, the completed roll to be approved by the Tribal Council of the Confederated Salish and Kootenai Tribes. In case of distribution of tribal assets, the roll shall be submitted to the Secretary of the Interior for final approval as may be provided by law.

Section 9. Rights of Members are Prospective. No person shall be entitled to receive a per capita payment or share in any other tribal assets which were distributed prior to the date of his actual enrollment.

ARTICLE III—THE TRIBAL COUNCIL

Section 1. The governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be the Tribal Council.

Section 2. The Council shall consist of ten councilmen to be elected from the districts as set forth hereafter, and Chiefs Martin Charlo and Eneas Paul Koostahtah.

Section 3. Representation from the districts hereby designated shall be as follows: Jocko Valley and Mission Districts, two councilmen each; Ronan, Pablo, Polson, Elmo-Dayton, Hot Springs-Camas Prairie, and Dixon, one councilman each.

Section 4. The Tribal Council shall have the power to change the districts and the representation from each district, based on community organization or otherwise, as deemed

advisable, such change to be made by ordinance, but the total number of delegates shall not be changed as provided for in section 2 of article III of this Constitution.

Section 5. The Tribal Council so organized shall elect from within its own number a chairman, and a vice chairman, and from within or without its own membership, a secretary, treasurer, sergeant-at-arms, and such other officers and committees as may be deemed necessary.

Section 6. No person shall be a candidate for membership in the Tribal Council unless he shall be a member of the Confederated Tribes of the Flathead Reservation and shall have resided in the district of his candidacy for a period of one year next preceding the election.

Section 7. The Tribal Council of the Confederated Tribes of the Flathead Reservation shall be the sole judge of the qualifications of its members.

ARTICLE IV—NOMINATIONS AND ELECTIONS

Section 1. The first election of a Tribal Council under this Constitution shall be called and supervised by the present Tribal Council within 30 days after the ratification and approval of this Constitution, and thereafter elections shall be held every two years on the third Saturday prior to the expiration of the terms of office of the members of the Tribal Council. At the first election, five councilmen shall be elected for a period of two years and five for a period of four years. The term of office of a councilman shall be for a period of four years unless otherwise provided herein.

Section 2. The Tribal Council or an election board appointed by the Council shall determine rules and regulations governing all elections.

Section 3. Any qualified member of the Confederated Tribes may announce his candidacy for the Council, within the district of his residence, notifying the Secretary of the Tribal Council in writing of his candidacy at least 15 days prior to the election. It shall be the duty of the Secretary of the Tribal Council to post in each district at least 10 days before the election, the names of all candidates for the Council who have met these requirements. Where more than two members have filed for an office, a Primary Election shall be held at least 30 days prior to the General Election. Only the two candidates for each office receiving the most votes at such Primary Election shall be eligible to run for office in the General Election. Where no more than two members have filed for an office, a Primary Election will be unnecessary.

Section 4. The Tribal Council, or a board appointed by the Council, shall certify to the election of the members of the Council within 5 days after the election returns.

Section 5. Any member of the Confederated Tribes of the Flathead Reservation who is 18 years of age or over and who has maintained a legal residence for at least one year on the Flathead Reservation shall be entitled to vote.

Section 6. The Tribal Council, or a board appointed by the Tribal Council, shall designate the polling places and appoint all election officials.

ARTICLE V—VACANCIES AND REMOVAL FROM OFFICE

Section 1. If a councilman or official shall die, resign, permanently leave the reservation, or be removed from office, the Council shall declare the position vacant and appoint a successor to fill the unexpired term, provided that the person chosen to fill such vacancy shall be from the district in which such vacancy occurs.

Section 2. Any councilman who is proven guilty of improper conduct or gross neglect of duty may be expelled from the Council by a two-thirds vote of the membership of the Council voting in favor of such expulsion, and provided further, that the accused member shall be given full and fair opportunity to reply to any and all charges at a designated Council meeting. It is further stipulated that any such member shall be given a written statement of the charges against him at least five days before the meeting at which he is to appear.

ARTICLE VI—POWERS AND DUTIES OF THE TRIBAL COUNCIL

Section 1. The Tribal Council shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached Bylaws;

(a) To regulate the uses and disposition of tribal property, to protect and preserve the tribal property, wildlife and natural resources of the Confederated Tribes, to cultivate Indian arts, crafts, and culture, to administer charity; to protect the health, security, and general welfare of the Confederated Tribes.

(b) To employ legal counsel for the protection and advancement of the rights of the Flathead Confederated Tribes and their members, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

(c) To negotiate with the Federal, State, and local governments on behalf of the Confederated Tribes, and to advise and consult with the representatives of the Departments of the Government of the United States on all matters affecting the affairs of the Confederated Tribes.

(d) To approve or veto any sale, disposition, lease, or encumbrance of tribal lands and tribal assets which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other agency of the Government, *provided* that no tribal lands shall be sold or encumbered or leased for a period in excess of five years, except for Governmental purposes.

(e) To advise with the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Confederated Tribes, prior to the submission of such estimates to the Congress.

(f) To manage all economic affairs and enterprises of the Confederated Tribes in accordance with the terms of a charter to be issued by the Secretary of the Interior.

(g) To make assignments of tribal lands to members of the Confederated Tribes in conformity with article VIII of this Constitution.

- (h) To appropriate for tribal use of the reservation any available applicable funds in the tribal treasury, provided that any such appropriation in excess of \$25,000 shall be subject to review by the Secretary of the Interior.
- (i) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for assessments or license fees upon nonmembers doing business within the reservation, or obtaining special rights or privileges, and the same may also be applied to members of the Confederated Tribes, provided such ordinances have been approved by a referendum of the Confederated Tribes.
- (j) To exclude from the restricted lands of the reservation persons not legally entitled to reside thereon, under ordinances which may be subject to review by the Secretary of the Interior.
- (k) To enact resolutions or ordinances not inconsistent with article II of this Constitution governing adoptions and abandonment of membership.
- (l) To promulgate and enforce ordinances which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Confederated Tribes, and providing for the maintenance of law and order and the administration of justice by the establishment of an Indian Court, and defining its powers and duties.
- (m) To purchase land of members of the Confederated Tribes for public purposes under condemnation proceedings in courts of competent jurisdiction.
- (n) To promulgate and enforce ordinances which are intended to safeguard and promote the peace, safety, morals, and general welfare of the Confederated Tribes by regulating the conduct of trade and the use and disposition of property upon the reservation, providing that any ordinance directly affecting nonmembers shall be subject to review by the Secretary of the Interior.
- (o) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative and other associations which may be organized under any charter issued under this Constitution.
- (p) To regulate the inheritance of real and personal property, other than allotted lands, within the Flathead Reservation, subject to review by the Secretary of the Interior.
- (q) To regulate the domestic relations of members of the Confederated Tribes.
- (r) To recommend and provide for the appointment of guardians for orphans, minor members of the Confederated Tribes, and incompetents subject to the approval of the Secretary of the Interior, and to administer tribal and other funds or property which may be transferred or entrusted to the Confederated Tribes or Tribal Council for this purpose.
- (s) To create and maintain a tribal fund by accepting grants or donations from any person, State, or the United States.
- (t) To delegate to subordinate boards or to cooperative associations which are open to all

members of the Confederated Tribes, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

(u) To adopt resolutions or ordinances to effectuate any of the foregoing powers.

Section 2. Any resolution or ordinance which by the terms of this constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Reservation who shall, within ten days thereafter, approve or disapprove the same, and if such ordinance or resolution is approved, it shall thereupon become effective, but the Superintendent shall transmit of copy of the same, bearing his endorsement, to the Secretary of the Interior who may, within 90 days from the date of enactment, rescind said ordinance or resolution for any cause, by notifying the Council of such action: *Provided*, That if the Superintendent shall refuse to approve any resolution or ordinance submitted to him, within ten days after its enactment, he shall advise the Council of his reasons therefor, and the Council, if such reasons appear to be insufficient, may refer it to the Secretary of the Interior, who may pass upon same and either approve or disapprove it within 90 days from its enactment.

Section 3. The council of the Confederated Tribes may exercise such further powers as may in the future be delegated to it by the Federal Government, either through order of the Secretary of the Interior or by Congress, or by the State Government or by members of the Confederated Tribes.

Section 4. Any rights and powers heretofore vested in the Confederated Tribes but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the members of the Confederated Tribes through the adoption of appropriate bylaws and constitutional amendments.

ARTICLE VII—BILL OF RIGHTS

Section 1. All members of the Confederated Tribes over the age of 18 years shall have the right to vote in all tribal elections, subject to any restrictions as to residence as set forth in Article IV.

Section 2. All members of the Confederated Tribes shall be accorded equal opportunities to participate in the economic resources and activities of the reservation.

Section 3. All members of the Confederated Tribes may enjoy without hindrance freedom of worship, speech, press, and assembly.

Section 4. Any member of the Confederated Tribes accused of any offense, shall have the right to a prompt, open, and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses in his own behalf and trial by jury shall be accorded, when duly requested, by any member accused of any offense punishable by more than 30 days' imprisonment, and excessive bail or cruel or unusual punishment shall not be imposed.

ARTICLE VIII—LAND

Section 1. Land Transactions. Subject to any limitations imposed by this Constitution and Bylaws, to any applicable Federal statute and to the approval of the Secretary of the Interior,

the Tribal Council may:

- (1) Purchase or receive by gift or relinquishment land or any interest therein, and may lease, exchange (with or without the giving or receipt of other consideration), encumber, and assign tribal lands or any interest therein; and
- (2) Adopt ordinances or resolutions governing any or all such transactions.

Section 2. Saving Clause. Nothing herein shall be held to impair rights heretofore acquired in any allotment or assignment held by any individual.

ARTICLE IX—REFERENDUM

Section 1. Upon a petition of at least one-third (1/3) of the eligible voters of the Confederated Tribes, or upon the request of a majority of the members of the Tribal Council, any enacted or proposed ordinance or resolution of the Council shall be submitted to a popular referendum, and the vote of a majority of the qualified voters voting in such referendum shall be conclusive and binding on the Tribal Council, provided that at least thirty percent (30%) of the eligible voters shall vote in such election.

ARTICLE X—AMENDMENTS

Section 1. This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Confederated Tribes voting at an election called for that purpose by the Secretary of the Interior, provided that at least thirty percent (30%) of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment, at the request of two-thirds of the Council, or upon presentation of a petition signed by one-third (1/3) of the qualified voters, members of the Confederated Tribes.

BYLAWS, AS AMENDED

ARTICLE I—THE TRIBAL COUNCIL

Section 1. The Chairman of the Council shall preside over all meetings of the Council, perform all duties of chairman, and exercise any authority detailed to him, and he shall be entitled to vote on all questions.

Section 2. The vice chairman shall assist the chairman when called on so to do, in the absence of the chairman shall preside, and when so presiding shall have all the privileges, duties, and responsibilities of the chairman.

Section 3. The Council secretary shall forward a copy of the minutes of all meetings to the Superintendent of the Reservation and to the Commissioner of Indian Affairs.

Section 4. The duties of all appointed boards or officers of the organization shall be clearly defined by resolutions of the Council at the time of their creation or appointment. Such boards and officers shall report from time to time as required to the Council and their activities and decisions shall be subject to review by the Council upon petition of any person aggrieved.

Section 5. Newly elected members who have been duly certified shall be installed at the first regular meeting of the Tribal Council.

Section 6. Each member of the Tribal Council and each officer or subordinate officer, elected or appointed hereunder, shall take an oath of office prior to assuming the duties thereof, by which oath, he shall pledge himself to support and defend the Constitution of the United States and this Constitution and Bylaws. The following form of oath of office shall be given: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, to carry out faithfully and impartially, the duties of my office to the best of my ability; to cooperate, promote, and protect the best interests of my Tribe, in accordance with this Constitution and Bylaws."

Section 7. Regular meetings of the Tribal Council shall be held on the first Friday of January, April, July, and October, at 9:00 o'clock a.m., at the Flathead Agency.

Section 8. Special meetings may be called by a written notice signed by the chairman or a majority of the Tribal Council and when so called the Tribal Council shall have power to transact business as in regular meetings.

Section 9. No business shall be transacted unless a quorum is present which shall consist of two-thirds (2/3) of the entire membership.

Section 10. Order of business:

- (a) Call to order by chairman.
- (b) Roll call.
- (c) Reading of minutes of last meeting.
- (d) Unfinished business.
- (e) Reports.

- (f) New business.
- (g) Adjournment.

Section 11. It shall be the duty of each member of the Tribal Council to make reports to the district from which he is elected, concerning the proceedings of the Tribal Council.

Section 12. The Tribal Council may prescribe such salaries for officers or members of the Council as it deems advisable, from such funds as may be available.

ARTICLE II—ORDINANCES AND RESOLUTIONS

Section 1. All final decisions of the Council on matters of general and permanent interest to the members of the Confederated Tribes shall be embodied in ordinances. Such ordinances shall be published from time to time for the information and education of the members of the Confederated Tribes.

Section 2. All final decisions of the Council on matters of temporary interest (such as action on the reservation budget for a single year, or petitions to Congress or the Secretary of the Interior) or relating especially to particular individuals or officials (such as adoption of members, instructions for tribal employees or rules of order for the Council) shall be embodied in resolutions. Such resolutions shall be recorded in a special book which shall be open to inspection by members of the Confederated Tribes.

Section 3. All questions of procedure (such as acceptance of Committee reports or invitations to outsiders to speak) shall be decided by action of the Council or by ruling of the Chairman, if no objection is heard. In all ordinances, resolutions or motions the Council may act by majority vote, but all matters of importance shall be fully discussed and a reasonable attempt shall be made to secure unanimous agreement.

Section 4. *Legislative forms.*—Every ordinance shall begin with the words: “Be it enacted by the Council of the Confederated Salish and Kootenai Tribes—.”

Section 5. Every resolution shall begin with the words: “Be it resolved by the Council of the Confederated Salish and Kootenai Tribes—.”

Section 6. Every ordinance or resolution shall contain a recital of the laws of the United States and the provisions of this Constitution under which authority for the said ordinance or resolution is found.

ARTICLE III—RATIFICATION OF CONSTITUTION AND BYLAWS

This Constitution and the attached Bylaws, when adopted by a majority vote of the voters of the Confederated Tribes voting at a special election called by the Secretary of the Interior, in which at least thirty (30) percent of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be in force from the date of such approval.

(Constitution and Bylaws of the Confederated Salish and Kootenai Tribes of the Flathead

Reservation, effective October 28, 1935; Amendment I, effective December 22, 1948; Amendments II, III, and IV, effective May 5, 1960; Amendments V and VI, effective May 16, 1974; Amendment VII, effective October 8, 1981.)

APPENDIX

Indian Civil Rights Act, 25 U.S.C. Section 1302.

(a) In general

No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense (except as provided in subsection (b));

(7)

(A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

(B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;

(C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

(D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(b) Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000
A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who—

(1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

(2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

(c) Rights of defendants

In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

(2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

(3) require that the judge presiding over the criminal proceeding—

(A) has sufficient legal training to preside over criminal proceedings; and

(B) is licensed to practice law by any jurisdiction in the United States;

(4) prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and

(5) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

(d) Sentences

In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant—

(1) to serve the sentence—

(A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;

(B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c) [1] of the Tribal Law and Order Act of 2010;

(C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or

(D) in an alternative rehabilitation center of an Indian tribe; or

(2) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

(e) Definition of offense

In this section, the term “offense” means a violation of a criminal law.

(f) Effect of section

Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.