



PUEBLO OF ZUNI

ZUNI TRIBAL CODE



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PREAMBLE

This Zuni Tribal Code is adopted by the Zuni Tribal Council pursuant to authority granted by the Constitution of the Zuni Tribe and in exercise of the powers of internal sovereignty, which inhere to the Tribe. This Code is intended to further the achievement of the purposes set forth in the Preamble to the Constitution of the Zuni Tribe.

TITLE I. GENERAL PROVISIONS

CHAPTER 1. PRELIMINARY PROVISIONS

§1-1-1. Name of Code.

This Law and Order Code shall be known and may be cited as the Zuni Tribal Code, and may be abbreviated as the Z.T.C. Codes or rules contained herein may be cited by the name given in the code or rule heading (e.g., Zuni Criminal Code).

§1-1-2. Repeal of Prior Inconsistent Ordinances and Resolutions.

Any and all ordinances or resolutions of the Zuni Tribal Council which deal with subjects contained herein or are inconsistent with or conflict with the provisions contained herein are hereby repealed as of the effective date of this Law and Order Code.

§1-1-3. Code of Federal Regulations.

As provided in § 11.100 of Title 25 of the Code of Federal Regulations, the regulations of Part 11 of that title no longer apply to the Zuni Tribe or its governmental processes.

§1-1-4. Amendment of Code.

This Tribal Code may be amended and additions made hereto and deletions made here from in the manner provided for the adoption of tribal ordinances. Amendments and additions to this Tribal Code shall become a part hereof for all-purpose and shall be organized and incorporated herein in a manner consistent with the numbering and organization of the rest of the Code.

CHAPTER 2. JURISDICTION.

§1-2-1. Tribal Policy.

It is hereby declared as a matter of Tribal policy and legislative determination by the Zuni Tribal Council that the public interest and the interests of the Zuni Tribe require that the Tribe provides itself, its members and other persons living on the Reservation or who are within the jurisdiction of the Tribe with an effective means of redress in both civil and criminal cases involving both members and non-members of the Tribe who, through either their residence, presence, business dealings, or contacts or other actions or failures to act, or other significant minimum contacts on or with the Reservation commit offenses against the Tribe or incur civil obligations to persons or entities entitled to the Tribe's protection. The jurisdictional provisions of this Tribal Code and the procedures and requirements contained herein shall, except otherwise

expressly provided, apply to all persons and entities, whether members of the Tribe or not, within the territorial jurisdiction of the Tribe.

§1-2-2. Territorial Jurisdiction.

(1) The jurisdiction of the Zuni Tribe as exercised in this Tribal Code shall extend to all lands now within the Zuni Indian Reservation or which may hereafter be added thereto and to such other lands without such Reservation as may be owned by the United States and held in trust for the benefit of the Zuni Tribe.

(2) To the extent not prohibited by federal law, the jurisdiction of the Zuni Tribe and its Courts shall extend beyond the territorial limitation set forth next above to effectuate the jurisdictional provisions set forth below.

§1-2-3. Personal Jurisdiction.

(1) As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company, association, or corporation.

(2) Subject to any contrary provisions, exceptions or limitations contained in either federal law, the Tribal Constitution, or as expressly stated elsewhere in this Tribal Code, the Courts of the Zuni Tribe shall have civil and criminal jurisdiction over the following persons, who shall also be subject to the rules, regulations and procedures established in this Tribal Code:

(a) Any person residing, located or present within the Reservation
for:

(i) Any civil cause of action; or

(ii) any charge of criminal offense prohibited by this Code or other ordinance of the Tribe when the offense is alleged to have occurred within the Reservation.

(b) Any person who transacts, conducts, or performs any business or activity within the Reservation, either in person or by an agent or representative, for any civil cause of action or charge of criminal offense for any act expressly prohibited by this Code or other ordinance of the Tribe arising from such business or activity.

(c) Any person who owns uses or possesses any property within the Reservation, for any civil cause of action or charge of criminal offense prohibited by this Code or other ordinance of the Tribe arising from such ownership, use or possession.

(d) Any person who commits a tortuous act or engages in tortuous conduct within the Reservation, either in person or by an agent or representative, for any civil cause of action arising from such act or conduct.

(e) Any person who commits a criminal offense prohibited by this Code or other ordinance of the Tribe, by his own conduct or the conduct of another for which he is legally accountable, if:

(i) The conduct occurs either wholly or partly within the Reservation;

or

(ii) The conduct, which occurs outside the Reservation constitutes an attempt, solicitation, or conspiracy to commit an offense within the Reservation, and an act in furtherance of the attempt or conspiracy occurs within the Reservation; or

(iii) The conduct, which occurs within the Reservation constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense prohibited by this Law and Order Code or other ordinance of the Tribe and is also prohibited by such other jurisdictions.

(3) None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established on any one or more of such bases.

§1-2-4. Jurisdiction Over Property.

Subject to any contrary provisions, exceptions or limitations in Federal law, the Tribal Constitution, or as expressly stated elsewhere in this Tribal Code, the rules, regulations and procedures contained herein shall apply to, and the Courts of the Zuni Tribe shall have jurisdiction over, any real or personal property located within the territorial jurisdiction of the Tribe as defined in this Law and Order Code to determine the ownership thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property is or may be liable.

§1-2-5. General Subject Matter Jurisdiction and Limitation.

(1) Subject to any contrary provisions, exceptions or limitations contained in either Federal law, the Tribal Constitution, or this Tribal Code, the Courts of the Zuni Tribe shall have jurisdiction over all civil actions and over all offenses occurring within the jurisdiction defined by this Law and Order Code.

(2) The Courts of the Zuni Tribe shall not assume jurisdiction over any civil or criminal matter which does not involve either the Tribe, its officers, agents, or employees in their official capacities, its property or enterprises, or a member of the Tribe or of some other federally recognized Tribe, or the ordinances, resolutions, rules, or regulations of the Tribe, if some other judicial forum exists for the handling of the matter and the matter is not one in which the rights of the Tribe or its members may be directly affected.

§1-2-6. Exclusive Original Jurisdiction. [Revised December 15, 2008, Resolution No. M70-2008-C079]

(1) Except as otherwise required by Federal law or as permitted below, the Courts of the Zuni Tribe shall have exclusive original jurisdiction over all matters in which the Zuni Tribe or its officers, agents, or employees are parties in their official capacities or as the result of performing their duties for the Tribe.

(2) Notwithstanding paragraph 1 of this Section 1-2-6, the Tribe, through the Tribal Council, may consent to jurisdiction of a state and/or federal court for the limited and sole purpose of an action to enforce the terms of a bond, loan or other credit facility (the "Financing Agreement") in the amount of Five Million Dollars (\$5,000,000.00) or more between the Tribe and a lender, and as further restricted by Tribal Council in the resolution approving the Financing Agreement. In no event shall the consent to jurisdiction authorized under this paragraph permit any tort claim, claim for punitive or exemplary damages, or other claim against the Tribe not expressly permitted under the resolution approving the Financing

Agreement or the Financing Agreement; nor shall such consent be construed to include parties to an action, other than the Tribe, the signing parties to the Financing Agreement, and security interest holders, lien claimants or claimants to title to the extent necessary to foreclose or otherwise enforce a mortgage or other security interest in property securing the loan evidenced by the Financing Agreement and related documents, and shall not extend to any other persons or entities.

(3) Nothing contained in this section or elsewhere in this Tribal Code shall be construed as a waiver of the sovereign immunity of the Tribe or its enterprises, or of its officers, agents or of its officers, agents or employees unless specifically denominated as such.

(Annotations: Enacted by Zuni Tribal Council Resolution No. M70-2008-C079 on December 15, 2008 and approved by the BIA on January 12, 2009.)

CHAPTER 3. COURTS, JUDGES, AND OTHER COURT PERSONNEL

§1-3-1. The Judicial Department.

The Judicial Department of the Zuni Tribe, as established by Article XIV of the Zuni Constitution, shall consist of the Tribal and Appellate Courts and the Judges, Clerks, and other Court related personnel specified herein.

§1-3-2. Courts.

(1) There is hereby established the Zuni Appellate Court, which may be referred to as the Appellate Court, to hear appeals from final judgments and orders of the Tribal Court. The Appellate Court shall also have the power to issue any writs or orders necessary and proper to the complete exercise of its jurisdiction, or to prevent or remedy any act of the Tribal Court beyond such Court's jurisdiction or to cause the Tribal Court to act when it unlawfully fails or refuses to act within its jurisdiction. The Appellate Court shall consist of a panel of three Judges.

(2) There is hereby established the Zuni Tribal Court, which may be referred to as the Tribal Court, to handle all matters of a judicial nature not specifically placed within the jurisdiction of some other judicial forum. The Tribal Court shall be a Court of general civil and criminal jurisdiction and shall hear appeals from all Tribal administrative bodies.

(3) The Tribal Council, by resolution, may establish a Juvenile Division of the Tribal Court to hear and decide all juvenile cases. Until such time as the Tribal Council establishes such a Juvenile Division, the Chief Judge of the Tribal Court shall designate a Tribal Court Judge to hear and decide all juvenile matters.

(4) The Courts of the Zuni Tribe, both Tribal and Appellate, shall be courts of record, and the clerks thereof are authorized to certify under seal as to the accuracy and validity of the files and records of all proceedings before the Courts of the Zuni Tribe. The Clerks of the Courts of the Zuni Tribe are authorized and directed to take, preserve and certify under seal to the accuracy of a verbatim record of the proceedings before the Courts of the Zuni Tribe. Such record may be taken and recorded by stenographic, electronic, mechanical or other recording means or devices approved by the Chief Judge of the Tribal Court as a trustworthy means of creating a permanent, verbatim record of all proceedings.

(5) The Chief Judge of the Tribal Court shall, by rule, prescribe the length of time such verbatim transcript shall be preserved by the Clerk. It shall be a criminal offense for a Clerk to

knowingly make or keep a false record, file or certificate or to alter, amend, or destroy any file, record or transcript without lawful authority. Verbatim transcript shall be preserved by the Clerk. It shall be a criminal offense for a Clerk to knowingly make or keep a false record, file or certificate or to alter, amend, or destroy any file, record or transcript without lawful authority.

§1-3-3. Judges.

(1) The Governor of the Zuni Tribe, with the concurrence of the Tribal Council, shall appoint a Chief Judge and up to two Associate Judges of the Tribal Court. The salary and other benefits of employment shall be set by resolution of the Tribal Council. No person shall be appointed to serve as a Tribal Court Judge unless he meets the requirements of Article XIV, Section 4, of the Zuni Constitution.

(2) The Appellate Court shall be convened and sit only as needed. The Governor of the Tribe, with the concurrence of the Tribal Council, shall appoint three Appellate Court Judges. At such times as there is more than one Tribal Court Judge in office, the Governor of the Tribe may designate that the Appellate Court panel shall consist of all Tribal Court Judges who did not hear the case being appealed, plus such other Judges as are necessary to fill the panel. The salary, term of office, and other benefits of employment shall be set by resolution of the Tribal Council. Appellate Court Judges may serve and be paid on a part-time basis.

(3) The Governor of the Tribe, in appointing Judges for the Tribal and Appellate Courts, shall give preference to enrolled members of the Zuni Tribe familiar with the language, customs, traditions and culture of the Tribe, but the Governor may, in his discretion appoint non-members of the Tribe as judges if they are otherwise possessed of appropriate legal training and judicial qualifications which no member of the Tribe available for service as a Judge possesses.

(4) A Judge once appointed shall not have his salary or compensation decreased during his term of office and no Judge shall be removed from office prior to the expiration of his term except as provided below.

(5) Judges may be appointed to successive terms of office.

§1-3-4. Removal of Judges.

A Judge may be removed from office prior to the expiration of his term by the affirmative vote of 5 members of the Tribal Council only upon the grounds of neglect of duty or gross misconduct, and only after the holding of a public hearing at which the Judge, after being given not less than 5 days' notice, is given an opportunity to answer all charges and present evidence in his own defense.

§1-3-5. Powers and Duties of Judges.

(1) Judges shall administer justice and discharge all duties imposed upon them by law and shall hear and decide matters of a judicial nature and enter judgments and orders disposing of such matters. In the absence of the Court Clerk, a Judge may perform the clerk's duties in addition to his own and may receive cash bail bonds whenever a clerk or other authorized person is not available.

(2) The Chief Judge shall be responsible for the administration of all courts and shall supervise all probation and parole officers. In addition, the Chief Judge shall be responsible for

the assignment of cases and the management of the Court's calendar and business. The Chief Judge shall designate an Associate Judge to act as Chief Judge in his absence.

(3) All judges of the Courts of the Zuni Tribe shall conform their conduct to the Code of Judicial Conduct as adopted by the American Bar Association.

(4) Every judicial officer has power to:

(a) preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of his official duty;

(b) compel obedience to his lawful orders;

(c) In a proceeding before him as provided by law;

(d) administer oaths to persons in proceedings before him and in any other case where such shall be necessary in the exercise of his powers and duties;

(e) punish for contempt to assure the effectual exercise of these powers.

§1-3-6. Disqualification of Judges.

(1) A Judge shall disqualify himself from hearing any matter in which he has a direct interest or in which any party to the matter is a relative by blood, in the fourth degree (first cousins), or where he feels that he will not be able to render a just decision.

(2) Any party to a legal proceeding may request a change of assignment of judges to hear the proceeding by filing a written Affidavit of Prejudice giving sufficient, reasonable grounds why the judge assigned should not hear the case. Such affidavit shall be presented to the Judge assigned to hear the case that shall rule on the sufficiency of the affidavit, and, if sufficient, either disqualify himself or turn the affidavit over to the Chief Judge or some other judge for a decision as to whether a different Judge should be assigned.

§1-3-7. Oath of Office of Judges.

(1) Every Judge prior to taking office or acting in such office shall take the following oath or affirmation:

I, _____, do solemnly swear (affirm) that I will support and defend the Constitution, laws and treaties of the United States, that I will support and defend the laws, ordinances and resolutions of the Zuni Tribe and that I will faithfully and impartially discharge the duties of my office to the best of my ability.

(2) Said oath may be administered by the Governor of the Tribe, or by a Judge of the Tribal Court.

§1-3-8. Authority for Tribal Courts.

(1) The Courts of the Zuni Tribe, in deciding matters of both substance and procedure, in cases otherwise properly before the Courts of the Zuni Tribe, shall look to and give weight as authority to, the following:

- (a) The Zuni Constitution and Bylaws;
- (b) This Tribal Code.
- (c) Ordinances of the Zuni Tribal Council;
- (d) Resolutions of the Zuni Tribal Council;
- (e) Customs, traditions and culture of the Zuni Tribe;

(f) Laws, rules and regulations of the Federal government and cases interpreting such. Such laws, rules and regulations may, in circumstances dictated by the Supremacy Clause of the U.S. Constitution, be required to take a higher order of precedence.

(g) The laws and rules, and cases interpreting such laws and rules, of the State of New Mexico. This provision shall not be deemed to be an adoption of such laws or rules as the law of the Zuni Tribe nor as a grant or cessation of any right, power or authority by the Zuni Tribe to the State of New Mexico.

- (h) The Common Law.

(2) The Courts of the Zuni Tribe shall not recognize nor apply any federal, state, or common law rule or procedure which is inconsistent with either the spirit or the letter of either the Zuni Constitution and Bylaws, this Tribal Code, or any Zuni Ordinances or Resolution or the customs, traditions, or culture of the Zuni Tribe, unless otherwise required, in the case of federal law, by the Supremacy Clause of the U.S. Constitution.

§1-3-9. Clerks of the Courts. [Revised February 2, 1989, Ordinance 44]

Deleted entirely.

§1-3-10. Duties and Powers of Clerks.

It shall be the duty of the Clerks of the Tribal Courts to supervise and keep all records, files, dockets or other records required to be kept by this Law and Order Code, by rule of the Court, Tribal resolution or as otherwise established, and further to keep a written record of all proceedings of the Court, to administer oaths, to collect and account for all fines, bail bond money, fees or other charges, which cause money to come to the Court, to deposit and account for all such moneys in the manner prescribed by the Tribal Council, and to disburse such money as authorized by law. The Clerks shall further assist the Court in any way required to facilitate the performance of its duties, aid the police or private citizens in their dealings with the Court, and may render assistance to individual members of the Tribe or their counsel in the drafting of documents incidental to proceedings in the Courts.

§1-3-11. Probation and Parole Officers. [Revised February 2, 1989, Ordinance 44]

Deleted entirely.

§1-3-12. Bonding of Court Personnel.

(1) All Judges and Clerks shall be bonded, at the Tribe's expense, in amounts determined by the Tribal Council, to secure the honest performance of their duties.

(2) The Tribal Council may provide for the bonding at Tribal expense, of jailers of the Tribal jail for the specific and limited purpose of receiving cash bails and bonds to secure the release of persons incarcerated in the Tribal jail.

CHAPTER 4. CONTEMPTS.

§1-4-1. Acts or Failures to Act Which Constitute Contempt of Court.

The following acts or failure to act may serve as the basis for finding an individual or other entity in contempt of court:

(1) Disorderly, contemptuous, or insulting behavior toward a Judge while holding Court, which tends to interrupt the course of the proceedings or undermine the dignity of the Court.

(2) A breach of the peace, or loud or boisterous conduct, which tends to interrupt the course of a judicial proceeding.

(3) Misbehavior in office, or other willful neglect or violation of duty as a counselor, attorney, or other spokesman, or a clerk, court administrator, police officer or other person appointed, elected, or hired to perform a representative, judicial or ministerial service in connection with the operation of the Court.

(4) Deceit, or abuse of process or proceedings of the Court by a party or counselor to a judicial proceeding.

(5) Disobedience to a lawful judgment, order or process of the Court.

(6) Assuming to be an officer, spokesman or other official of the Court and acting as such without authority.

(7) Rescuing or taking any person or property from the Court or an officer acting under Court order, contrary to the order of the Court.

(8) Unlawfully detaining or otherwise interfering with a witness or party to an action while such person is going to or from a Court proceeding or attending Court.

(9) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

(10) Any other interference with the process, proceedings, or dignity of the Court or a Judge of the Court while in the performance of his official duties.

§1-4-2. Civil Contempt.

(1) A civil contempt is prosecuted to preserve, protect, enforce or restore the duly adjudicated rights of a party to a civil action against one under legal obligation to do or refrain from doing something as a result of a judicial decree or order.

(2) Relief in a civil contempt proceeding may be coercive or compensatory in nature as to the complaining party and may include a fine payable to the Court or to the complaining party or imprisonment of the party in contempt to secure compliance, or both.

§1-4-3. Criminal Contempt.

(1) Conduct, which is directed at, or is detrimental to, the dignity and authority of the Court is a criminal contempt.

(2) Criminal contempt is an offense which may be punishable, at the discretion of the Court based on the nature of the conduct in question, with a fine of up to \$500.00 and/or up to six (6) months in jail.

§1-4-4. Contempt Procedure.

(1) A direct contempt is one committed in the presence of the Court or so near thereto as to be disruptive of the Court proceedings, and such may be adjudged and punished summarily.

(2) All other contempt's shall be determined at a hearing at which the person accused of contempt is given notice and an opportunity to be heard.

CHAPTER 5. COUNSELORS AND PROFESSIONAL ATTORNEYS

§1-5-1. Lay Counsel.

(1) Any person appearing as a party in any judicial proceeding before a Court of the Zuni Tribe shall have the right to be represented by a lay counselor (not a professional attorney) and to have such person assist in the preparation and presentation of his case.

(2) The Zuni Tribe shall have no obligation to provide or pay for such lay counselors and such obligation shall rest entirely with the person desiring such a counselor.

(3) Any person appearing as a lay counselor shall be subject to the same ethical obligations of honesty and confidentiality towards his client as would be a professional attorney, and the attorney-client testimonial privilege shall apply in appropriate circumstances.

(4) Lay counselors shall be deemed officers of the Court for purposes of their representation of a party and shall be subject to the disciplinary authority of the Court in all matters related to their representative capacity.

§1-5-2. Right to be Represented by a Professional Attorney.

Any person appearing as a party in any civil or criminal action shall have the right to be represented by a professional attorney of his own choice and at his own expense; provided, however, that the Zuni Tribe has no obligation to provide or pay for such an attorney; provided further, that any such attorney appearing before the Courts of the Zuni Tribe shall have first obtained admission to practice before such Courts in accordance with the procedures set forth herein.

§1-5-3. Eligibility for Admission.

Any attorney who is certified and eligible to practice before the highest Court of any state or of the United States Supreme Court, and is in good standing before such Court, shall be eligible to be admitted to practice before the Courts of the Zuni Tribe.

§1-5-4. Procedure for Admission.

(1) The Chief Judge of the Tribal Court may, by rule, subject to the approval of the Tribal Council, establish admission procedures, admission fees and an oath to be complied with by attorneys desiring to practice before the Courts of the Zuni Tribe.

(2) Until such time as admission procedures are established, any attorney meeting the qualifications of §1-5-3 shall be permitted to practice before the Courts of the Zuni Tribe.

§1-5-5. Standards of Conduct and Obligations for Attorneys and Lay Counsel.

(1) Every attorney admitted to practice before the Courts of the Zuni Tribe, and every lay counsel employed or appointed to represent another before such courts when acting in such capacity or in matters in any way related thereto, shall conform behavior of the Code of Professional Responsibility as adopted by the American Bar Association.

(2) Both professional attorneys and lay counselors who hold themselves out as being available to act as such have a responsibility to accept as clients and represent without compensation or without full compensation, such persons as a Judge of a Tribal Court may feel have particularly urgent need for such representation but are personally unable to afford or pay for such legal help.

§1-5-6. Disbarment and Discipline.

(1) Whenever it is shown to the Chief of Judge of the Tribal Court that any attorney admitted to practice before the Courts of the Zuni Tribe has been disbarred or suspended from the practice of law by or before the highest court of any state, such attorney shall immediately be given notice that he shall be indefinitely suspended from further practice before the Courts of the Zuni Tribe unless he can appear within 10 days and show good cause why an order to the effect should not be made.

(2) Any Judge who finds an attorney admitted to practice before the Courts of the Zuni Tribe to be in contempt of Court may, in addition to any other sanction imposed, order the attorney to appear within ten (10) days and show cause why he should not be suspended from practicing before the Courts of the Zuni Tribe.

(3) The Chief Judge may, upon receiving a written, verified complaint, which indicates that an attorney admitted to practice before the Courts of the Zuni Tribe has acted in an unethical or otherwise improper manner while functioning as an attorney, order such attorney to appear and defend himself at a hearing to hear all evidence relevant to the matter, and may order the suspension of such an attorney of such appears reasonably necessary or appropriate.

(4) All suspensions from practicing before the Courts of the Zuni Tribe shall be for an indefinite period unless the Judge specifically orders otherwise. An attorney suspended for an indefinite period, or one suspended for a specific period, may petition the Tribal Court for permission to reapply for permission to practice at the end of one year or the specific period of

suspension, and such permission shall be granted if it is made to appear, at a hearing or otherwise as the Court shall direct that he has been adequately reprov'd and now appears willing to conduct himself in a proper manner, and that the petitioner has been reinstated to practice if previously disbarred or suspended in another jurisdiction.

(5) Any person appearing as lay counsel for another may be suspended from further appearance as such misconduct or improper behavior by any Judge upon the same conditions of notice and hearing provided professional attorneys.

§1-5-7. Oath of Attorneys and Counselors.

(1) Upon admission to practice as provided herein, an attorney may be required to take an oath, in form to be prescribed by the Chief Judge of the Tribal Court, to the effect that he will support and defend the Constitution and laws of the United States and the Constitution and Bylaws and ordinances and resolutions of the Zuni Tribe, that he will show due respect for the Courts and Judges of the Zuni Tribe, and that he will observe and follow the ethical standards embodied in American Bar Association's Code of Professional Responsibility.

(2) A lay counselor, hired, retained, or appointed to represent another before any Court of the Zuni Tribe shall take a like oath at or before the time for his first appearance in Court.

§1-5-8. Admission Fee for Professional Attorneys.

(1) The Chief Judge of the Tribal Court may, by rule, and with the approval of the Zuni Tribal Council, establish a reasonable fee to be charged professional attorneys upon their admission to practice before the Courts of the Zuni Tribe.

(2) The Chief Judge of the Tribal Court may, by rule, and with the approval of the Zuni Tribal Council, establish as annual fee to be charged all professional attorneys who have been admitted to practice before the Courts of the Zuni Tribe. Such fee shall not be charged in the year in which an admission fee has been paid.

(3) Until otherwise established as provided herein, the admission and annual fees shall be \$50.00.

CHAPTER 6. JURORS

§1-6-1. Eligibility for Jury Duty.

(1) Any enrolled member of the Zuni Tribe, between the ages of 18 and 70, who has not been convicted of a felony or a Class A offense under this Code, and who resides on the Zuni Reservation, shall be eligible to be a juror. Judges and other officers or employees of the Court shall not be eligible to be jurors while thus employed.

(2) In any case involving non-enrolled Indians, or non-Indians, the list of potential jurors shall include persons from a list of non-members of the Tribe living on the reservation. In any such case, the selection of potential jurors shall be made by some random means by which persons on the list of non-members have an equal chance of being chosen to be placed on the list of potential jurors.

(3) The Chief Judge shall cause a list of non-members of the Tribe eligible for jury duty to be prepared, using the assistance of whatever resources exist on the Reservation, having

access to the relevant information. Such persons shall be eligible if they are between the ages of 18 and 70, have not been convicted of a felony or a Class A offense under this Code and reside on the Zuni Reservation.

§1-6-2. Jury List.

Each year, the Tribal Council, or the Chief Judge at the direction of the Tribal Council, shall prepare a list of eligible jurors, which list shall contain not less than fifty (50) names.

§1-6-3. Trial Juries.

(1) The Clerk shall subpoena not less than fourteen (14) persons from the list of eligible jurors to appear and be available to serve as jurors whenever a jury trial is scheduled in a civil or criminal matter.

(2) The selection from the list of eligible jurors shall be by lot or some other means of random, impartial selection.

(3) Selection of jurors to hear the case shall be accomplished as provided in the Rules of Civil and Criminal Procedure elsewhere in this Tribal Code.

§1-6-4. Power to Excuse Jurors.

The Judge assigned to hear a case shall have the power to excuse a person subpoenaed to appear as a juror on account of sickness, disability, extreme hardship or other good cause shown upon the request for such excusal by the person subpoenaed.

§1-6-5. Compensation of Jurors.

Each juror who is called and reports for jury duty or who serves on a jury shall be entitled to receive such fees for daily service and/or mileage, if any, as the Tribal Council shall establish by resolution, or as established by a rule of the Court approved by the Tribal Council.

CHAPTER 7. SUBPOENAS AND SERVICE OF OTHER PAPERS

§1-7-1. Issuance of Subpoenas.

(1) The Clerk shall issue subpoenas to compel the attendance of witnesses, jurors or such other persons as a Judge may direct for a trial, hearing or other proceeding before a Court of the Zuni Tribe.

(2) In a criminal case, the complaining witness and all witnesses for the Zuni Tribe may be subpoenaed to appear at the date and time set for trial or a reasonable time before such time, plus the defendant shall have the right to have witnesses subpoenaed to appear in his behalf by notifying the Clerk of the Court of the names and addresses of such witnesses not less than ten (10) days prior to the scheduled trial date.

§1-7-2. Service of Subpoenas; Return on Service.

(1) Subpoenas in criminal cases shall be served by a Tribal Policeman, or other person designated by the Chief Judge, Chief of Police or Tribal Council.

(2) Subpoenas in non-criminal cases may be served by any person, over 18 years of age, not a party to the action.

(3) Except by order of the Court based upon good cause shown therefore, no subpoena shall be served between the hours of 9:00 p.m. and 7:00 a.m. or on Sundays or legal holidays.

(4) The person serving a subpoena shall endorse upon the copy served his name, title, and the place, date, and time of service.

(5) The person serving a subpoena shall make a return to the Clerk stating the name of the case, the name of the person served, the place, date, and time of service, and shall subscribe his name thereto under penalty of perjury for the intentional making of a false return.

CHAPTER 8. GENERAL PROVISIONS

§1-8-1. Copies of Laws.

There shall be kept available for public inspection during regular business hours at the office of the Clerk of the Tribal Court, copies of this Tribal Code and any amendments thereto, plus copies of all laws or rules which are incorporated by reference from other jurisdictions into this Law and Order Code, plus a copy of the Code of Professional Responsibility of the American Bar Association.

§1-8-2. Records of Court Open to Public Inspection; Exceptions.

The files and records of the Courts of the Zuni Tribe shall be open for public inspection, except that the files and records of adoptions, in competency proceedings, and Juvenile Court proceedings shall not be open to public inspection and may be inspected only with prior specific judicial authorization.

§1-8-3. Adoption by Reference Not a Waiver of Sovereign Power Of the Zuni Tribe.

The adoption of any law, code or other document by reference into this Law and Order Code shall in no way constitute a waiver or cession of any sovereign power of the Zuni Tribe to the jurisdiction whose law or code is adopted or in any way diminish such sovereign power, but shall result in the law or code thus adopted becoming the law of the Zuni Tribe.

§1-8-4. Sovereign Immunity.

Except as required by federal law, or the Constitution and Bylaws of the Zuni Tribe, or as specifically waived by a resolution or ordinance of the Tribal Council specifically referring to such, the Zuni Tribe shall be immune from suit in any civil action, and its officers and employees immune from suit for any liability arising from the performance of their official duties.

§1-8-5. Actions By or Against Tribe or Its Officers or Employees.

In any action otherwise authorized by or against the Tribe or its officers or employees arising from the performance of their official duties, the following modifications to the rules or procedures set forth in this Law and Order Code shall apply:

(1) The periods of time specified for civil cases or appeals of either a civil or criminal nature in which an answer, reply or other pleading or response of any kind shall be required shall be double the period specified.

(2) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of the costs or expenses of the opposing party.

(3) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be required to post security by bond or otherwise for any purpose.

(4) No action, otherwise authorized, may be instituted against any officer or employee of the Tribe for a cause of action arising out of, or in the course of the performance of his duty, or any action upon the bond of any such officer or employee, unless there is filed with the complaint a cash or written bond or undertaking with at least two sufficient sureties subject to the jurisdiction of the Court in the amount of \$300.00 or such greater amount as the Court may order, conditioned for the payment of such costs, charges and reasonable attorney's fees to be fixed by the Court as may be awarded against the Plaintiff in said action.

(5) No action may be instituted against the Tribe unless security under the same conditions as set forth next above is filed with the complaint.

§1-8-6. Limitations in Civil Actions.

Unless otherwise specifically provided in the Law and Order Code, the following limitations on the bringing of civil actions will apply:

(1) Any action against the Tribe or its officers or employees arising from the performance of their official duties must be commenced within one year of the date the cause of action accrued.

(2) Any other action must be commenced within three years of the date the cause of action accrued, provided, however, that any cause of action based on fraud or mistake shall not be deemed to have accrued until the aggrieved party has discovered or reasonably should have discovered the facts constituting the fraud or mistake.

§1-8-7. Principles of Construction.

The following principles of construction will apply to all of the Tribal Code unless a different construction is obviously intended:

(1) Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.

(2) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.

(3) Whenever a term is defined for a specific part of this Tribal Code that definition shall apply to all parts of this Code unless a contrary meaning is clearly intended.

(4) This Tribal Code shall be construed as a whole to give effect to all its parts in a logical, consistent manner.

(5) If any provision of this Tribal Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of this Tribal Code are declared to be severable.

(6) Any typographical errors or omissions shall be ignored whenever the intended meaning of the provision containing the error or omission is otherwise reasonably certain to the Court.

(7) Any other issues of construction shall be handled in accordance with generally accepted principles of construction giving due regard for the underlying principles and purposes of this Tribal Code.

§1-8-8. Definitions.

The following definitions will apply to this Tribal Code:

(1) "Indian" or "Indian person" shall include any person of Indian descent who is a member of any recognized tribe under federal jurisdiction.

(2) "Member" shall include a person whose name appears on the Membership Role of the Zuni Tribe of the Zuni Reservation.

(3) "Reservation" shall include all lands within the exterior boundaries of the Zuni Reservation as defined in Article I of the Constitution of the Zuni Tribe or other lands as maybe added to the reservation. See §1-2-2(1) "Tribe" shall mean the Zuni Tribe of the Zuni Reservation, New Mexico, unless another or nonspecific Indian tribe is clearly intended.

(5) "Pueblo of Zuni" shall mean the Zuni Tribe of the Zuni Reservation, New Mexico.

(6) "Tribal Council" shall mean the Zuni Tribal Council as specified in the Constitution of the Zuni Tribe of the Zuni Reservation.

(7) "Superintendent" shall mean the representative of the Bureau of Indian Affairs or other person to who has been delegated administrative authority by the Bureau of Indian Affairs for the Zuni Reservation.

(8) "Age of Majority" shall mean 18 years of age unless otherwise provided in this Law and Order Code or the Tribal Constitution.

(9) "Signature" shall mean the written signature, or official seal of a person, or the mark or thumbprint of a person witnessed by two disinterested persons subscribing their names therewith.

(10) "Governor" shall mean the Governor of the Zuni Tribe.

END OF TITLE I. GENERAL PROVISIONS

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TITLE II. ZUNI RULES OF CIVIL PROCEDURE

RULE 1. SCOPE OF RULES.

A. Scope. Except when different rules prescribed in this Code specifically apply, these rules shall govern the procedure in the trial and appellate courts of the Zuni Tribe, in all actions, suits and proceedings of a civil nature, in all special proceedings established by law, and in criminal matters to the extent no different rule is specified.

B. Construction. These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.

C. One Form of Action. There shall be one form of action known, except in criminal cases, as a "civil action."

D. Collateral References. Any procedures or matters not specifically set forth herein shall be handled in accordance with the Federal Rules of Civil Procedure insofar as such are not inconsistent with these rules, and with general principles of fairness and justice as prescribed and interpreted by the Court.

RULE 2. COMMENCEMENT OF ACTION; SERVICE OF PROCESS.

A. Commencement of Action. A civil action is commenced by filing a complaint and serving a copy of such on the defendant or defendants as provided herein. The Court shall have jurisdiction from such time as both the complaint is filed and properly served upon the defendant and a return of service is filed with the Clerk.

B. Service of Process. Service of process shall consist of delivering to the party served a copy of the complaint along with a summons, issued by the Judge or Clerk, which advises the defendant that he is required to answer the complaint within 20 days or a default judgment will be entered against him.

(1) The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the clerk.

(2) Service may be made on a party by delivering the required papers to the party himself or upon some person of suitable age and discretion over 14 years old at the party's home or principal place of business, or on an officer, managing agent or employee, or partner of a non individual party.

(3) Service by publication may be made upon order of the Court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once per week for complaint or paper with the Court for the party.

(4) Service may be made by any law enforcement officer or other person, not a party, 18 years of age or older.

(5) Service upon a person otherwise subject to the jurisdiction of the Tribal Court may be made anywhere in the United States; otherwise, service shall be made within the exterior boundaries of the Reservation.

(6) If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers.

C. All papers required to be filed shall be served as under this rule, or except for the complaint, may be served on the counselor or attorney of a party. Service of all papers except the complaint may be made by mail, first class postage prepaid and properly addressed.

RULE 3. TIME.

A. Computation. In computing any period of time set forth herein, the day that the period is to commence from shall not be counted and the last day of the period shall be counted; provided, however, that any time period under 7 days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday or legal holiday.

B. Enlargement. The Court for good cause shown may enlarge the prescribed period of time within which any required act may be done.

C. Notice of Motions. Written motions and notice of hearing thereon, other than ones, which may be heard ex parte, shall be served not later than 5 days prior to the time specified for hearing.

D. Service by Mail. Whenever service is accomplished by mail, three days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period if they would not otherwise have been counted.

RULE 4. PLEADINGS, MOTIONS AND ORDERS.

A. Pleadings. There shall be a complaint and an answer; plus a responsive pleading shall be allowed whenever, by cross claim, counterclaim or otherwise, a party is first claimed against unless the Court shall otherwise order. The Court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.

B. Motions and Orders.

(1) Motions. An application to the Court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefore stated with particularity. A motion and notice of motion may be set forth together.

(2) Orders. An order includes every direction of the Court whether included in a judgment or not, and may be made with or without notice to adverse parties and may be vacated or modified with or without notice.

C. Hearings on Motions and Orders. A motion or hearing of an order shall be automatically continued if the Judge before whom it was to be heard is unable to hear it on the day specified and no other Judge is available to hear it.

RULE 5. GENERAL RULES OF PLEADING.

A. Claims for Relief. A pleading, which sets forth, a claim for affirmative relief shall contain:

(1) A short, plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction over the matter;

(2) A short, plain statement of the claim showing that the pleader is entitled to relief; and

(3) A demand for judgment for the relief to which the pleader considers himself entitled. Such claim for relief can be in the alternative or for several types of relief.

B. Defenses and Denials. A party shall state in plain, concise terms the grounds, upon which he bases his defense to claims pleaded against him, and shall admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claims or statements denied and may be made as to specified parts but not all of a claim, statement, or averment. A general denial shall not be made unless the party could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied; if no responsive pleading is allowed the claims of the adverse party shall be deemed denied.

C. General Content of Claims and Defenses. Claims and defenses shall be simply, concisely, and directly stated, but may be in alternative or hypothetical form, on one or several counts or defenses, need not be consistent with one another, and may be based on legal or equitable grounds or both.

D. Affirmative Defenses. Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the court may treat the pleading as if it had been properly designated if justice so requires.

E. Construction of Pleadings. All pleadings shall be construed so as to do substantial justice.

RULE 6. FORM OF PLEADINGS.

A. Caption. Every pleading shall contain a caption heading, the name of the Court, the title of the action, the Court file number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties except the name of the first party on each side may be used on all pleadings except the complaint.

B. Paragraphs. All averments of claim or defense shall be set forth in separate numbered paragraphs each of which is limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

C. Exhibits; Adoption by Reference. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of a written instrument, which is an exhibit to a pleading, is a part thereof for all purposes.

D. Paper Used in Pleadings. Insofar as is possible, pleadings and other papers filed in any action shall be on legal size paper, double spaced, except for matters customarily single spaced, contain at least a 2-inch top. Margin and a 1-inch left side margin, and contain the Court file number on the first page thereof. Substantial compliance with this rule will be sufficient for all parties not represented by a professional attorney.

RULE 7. DEFENSES AND OBJECTIONS.

A. When Presented. A defendant or other party against whom a claim has been made for affirmative relief shall have 20 days from the date of service upon him to answer or respond to the claim.

B. Motions. Motions to dismiss or to make the opposing parties' pleadings more definite may be made prior to answering a claim and an answer will not be due until 10 days after the disposition of the motion by the Court.

RULE 8. COUNTERCLAIM OR CROSS CLAIM.

A. Counterclaim. A party against whom a claim is made may assert in his answer any claims he has against the party claiming against him and both claims shall be resolved at trial.

B. Cross Claim. A party against whom a claim is made may assert any claim he has against a co-party and have such claim resolved at trial.

C. Third Party Claim. A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party and have such complaint resolved at trial.

RULE 9. AMENDMENT OF PLEADINGS.

A. Amendment Before Trial. A party may amend his pleadings once before the opposing party has replied or if no reply is required, not less than 20 days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date is delayed if necessary. Other amendments shall be allowed only upon motion and order of the Court.

B. At Trial. When issues or evidence not raised in the pleadings are heard at trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

RULE 10. PARTIES.

A. Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in his own name without joining the party for whose benefit the action is maintained.

B. Guardian ad Litem. When an infant, or insane, or incompetent person who has not had a general guardian appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action.

C. Joinder of Parties. To the greatest extent possible given the limited jurisdiction of the Tribal Court, all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

RULE 11. INTERVENTION.

A person may intervene and be treated in all respects as a party to an action in cases in which property in which he has an interest may be affected or a question of law or fact common to a claim of his may be litigated.

RULE 12. SUBSTITUTION OF PARTIES.

If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

RULE 13. DISCOVERY.

A. Interrogatories. A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within 25 days of receipt of such.

B. Depositions. Oral deposition may be taken of a party or non-party witness only upon the stipulation of the parties or upon order of the Court based upon the demonstrated inadequacy of other discovery methods under the circumstances.

C. Production, Entry, or Inspection. A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within 25 days reply as to whether or not such will be allowed and if not, why not.

D. Scope of Discovery. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of the work product of a party's counselor or attorney.

E. Protective Order. A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.

F. Failure to Make Discovery. If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the Court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense be deemed established or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party in an aggravated case.

G. Use of Discovery. Answers to interrogatories and depositions may be used in a motion, hearing or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose, or to supply evidence otherwise unavailable to the Court.

RULE 14. PRETRIAL PROCEDURES.

A. Intent. These pretrial procedures are intended to establish means whereby both civil and criminal disputes can be settled in the traditional, customary Indian manner by discussion between the parties before a trusted, impartial trial authority prior to resorting to formal trial procedures adopted from the non-Indian society and incorporated as a part of tribal law. The procedures require that formal court authority be invoked by the filing of a complaint, but anticipate that a great percentage of cases can be settled by traditional and customary means, administered hereafter by the Tribal Court. **The procedures set forth in this Rule shall not be interpreted or applied to deny any person any right otherwise guaranteed by Tribal or Federal law.**

B. Applicability. The procedures established in this Rule shall apply in all cases, both civil and criminal, if, at the appropriate times referred to herein, there are two or more judges of the Tribal Court holding office and available to participate as provided herein.

C. Time. Not less than two weeks prior to the scheduled trial date of a civil or criminal case, or at such other time prior thereto as the Chief Judge shall order, a pretrial conference shall be held as provided herein.

D. Civil Cases. A pretrial conference as provided herein shall be held in all civil cases once the case is at issue. All plaintiffs and all defendants shall be required to attend the pretrial conference in a civil case. The parties may, upon obtaining the advance consent of the judge assigned to conduct the pretrial conference, bring with them such other persons, not including their attorney, advocate or lay counselor, as will tend to further the resolution of the issues of the case.

E. Criminal Cases. A pretrial conference as provided herein shall be held in all criminal cases once the case is at issue by virtue of the Defendant entering a plea of not guilty to a complaint. The defendant, complaining witness, arresting officer and such other witnesses as either side may desire to summon shall be required to attend the pretrial conference in a criminal case. Upon obtaining the advance consent of the judge assigned to conduct the pretrial conference, either side may summon other persons, not including the prosecuting or defense attorneys, advocates or lay counselors, as will tend to further the resolution of the issues of the case and the proper disposition of the defendant should guilt be admitted. Such other persons may, but need not include the defendant's spouse or other family members, and any social workers, probation officers or similar persons having professional training.

F. Failure to Appear; Penalties. Any person summoned to appear at a pretrial conference who shall fail to appear shall be subject to being charged for failing to obey the lawful order of the Court and/or, if a party to the action, having the case summarily determined against him.

G. Conduct of Pretrial Conference. There shall be no record or transcript made of the proceedings at the pretrial conference nor shall any statement made therein by any person be used for any purpose should the case ultimately come to trial. **If agreement is reached on**

some or all of the issues presented in the case, such agreement shall be recorded by the judge conducting the pretrial conference, or court clerk at his direction and may be embodied in a final or interlocutory order or judgment or in a pretrial order prepared to govern the conduct of any trial subsequently held.

H. Attorneys and Public. Pretrial conferences as provided herein shall not be open to the public nor shall professional attorneys, advocates or lay counselors be allowed to attend as representatives of the parties or otherwise (unless parties themselves).

I. Judge's Function. The judge conducting the pretrial conference shall listen to the positions of the parties and attempt to work out a settlement of all or some of the issues of the case. Such settlement shall not be inconsistent with the laws, ordinances, customs and traditions of the Tribe.

J. Disposition of Cases. In the event a settlement of the case is worked out, the judge conducting the pretrial conference shall cause a record to be made of such settlement by means of an order or judgment entered in the record of the case. In the event that some of the issues are not agreed to the judge shall cause a pre-trial order to be prepared stating what issues have been settled and what issues remain to be tried and such pretrial order shall supersede the pleadings, for purposes of framing the issues for trial. The pretrial order may also contain agreements, stipulations, or orders by the Court as to the production of witnesses and evidence and the conduct of discovery before trial. If trial appears necessary, the Court clerk shall, at the time of the pretrial conference, obtain the names of all persons to be subpoenaed as witnesses and prepare and arrange for service of the necessary subpoenas.

K. Voluntary Agreements. No settlement of any issue in a civil case shall be made at the pretrial conference except with the voluntary agreement, taken by the judge conducting the pretrial conference, of all parties involved in the determination of the issue. No settlement of any issue in a criminal case shall be made at the pretrial conference except with the voluntary agreement, taken by the judge conducting the pretrial conference, of the defendant. The defendant in a criminal case shall be afforded the opportunity to consult with counsel of his choosing (and at his own expense) if he so desires, prior to agreeing to any judgment or order settling the case or any issue thereof or agreeing to a pre-trial order.

L. Criminal Defendants. A defendant in a criminal case summoned to a pretrial conference shall be required to attend but shall not be required to testify, cooperate or otherwise participate in the pretrial conference. The Judge conducting the pretrial conference in a criminal case shall explain these matters to the defendant at the beginning of the conference and shall, if a settlement involving an admission of guilt is reached, determine the voluntaries of the agreement and determine that the defendant understands the rights he is giving up to the same extent as would be determined by the Court if a guilty plea has been offered originally. If a defendant in a criminal case indicated his unwillingness to cooperate, no further discussion or proceeding need be held.

M. Unsettled Cases. All cases not settled either in whole or in part at the pretrial conference shall be scheduled for trial and a trial held before a judge, other than the judge conducting the pretrial conference, as if no such pretrial conference had been held, except that any pretrial order agreed to by the parties prior to the trial shall be controlling at the trial.

N. Pretrial Conference in Other Situations. In the event that the Tribal Court cannot or has not implemented the procedures set forth in this Rule, any party may request a pretrial conference, with counsel, before the judge scheduled to try the case.

RULE 15. JURY TRIALS.

A. When Allowed. Trials of all civil actions shall be to the Court without a jury unless a party to the action files a request for a jury trial and a fee of \$10.00 not less than 25 days prior to the scheduled date of trial. A judge may, upon good cause shown, waive payment of the required fee.

B. Issues Triable. Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify only those issues he wants tried to the jury, and any other party may specify, not less than 10 days before the date scheduled for trial, any other issues he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all of the parties.

C. Designation by Judge.

(1) A judge may, upon his own motion, order the trial by a jury of any or all of the factual issues of a case regardless of whether or not the parties have requested such.

(2) A judge may, upon motion of any party or its own initiative, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order that no jury trial be held on such issues.

(3) A judge may hear and decide an issue or issues without a jury if either party to an issue fails to appear at trial, regardless of any request made for a jury trial on such issues.

RULE 16. ASSIGNING CASES FOR TRIAL.

A. Assignment of Judge and Date. The Chief Judge shall determine which judge shall hear a case, and shall provide by rule for the placing of cases on the Court calendar with or without the request of any party, provided all parties are given adequate notice of trial dates.

B. Postponement. Upon motion of a party, the Court may in its discretion, and upon such terms as it deems just, including the payment of any cost occasioned by such postponement, postpone a trial or proceeding upon good cause shown.

RULE 17. DISMISSAL OF ACTIONS.

A. Voluntary Dismissal. Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment on such claim, the party making the claim may file a notice of dismissal, and his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss his own claim, and the Court shall do so either with or without prejudice as is just and proper given the stage of the proceedings, provided, however, if a cross claim or counterclaim has been filed against the moving party, the Judge shall dismiss the claim only with the consent of the adverse party or only

if it appears that the other party can prosecute his claim independently without undue additional hardship.

B. Involuntary Dismissal. A party against whom a claim has been made may move the Court to dismiss the claim of the adverse party upon any of the following grounds:

- (1) failure of the adverse party to pursue prosecution of his claim; or
- (2) failure of the adverse party to comply substantially with these rules; or
- (3) failure of the adverse party to comply with an order of the Court; or

(4) at the close of the presentation of the other party's evidence and without prejudicing his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented;

(5) whenever dismissal appears proper based upon a failure to prove a claim. Such dismissal shall be deemed an adjudication of the merits of the issue dismissed unless the Court shall, for good cause shown, order otherwise. The Court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

C. The Court may order a party moving to dismiss his own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

RULE 18. CONSOLIDATION; SEPARATE TRIALS.

A. Consolidation. The Court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions or if such will tend to avoid unnecessary cost or delay.

B. Separate Trials. The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

RULE 19. EVIDENCE.

A. Form and Admissibility. At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All evidence admissible under the Federal Rules of Evidence, or as specified in this Tribal Code shall be admissible and the competency of witnesses to testify shall be similarly determined.

B. Examination and Cross Examination.

(1) A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.

(2) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness.

(3) Cross examination shall be limited to the general scope of direct examination, provided, however, that full examination of all witnesses shall be allowed on direct or cross-examination to assure complete development of all relevant facts.

C. Physical Evidence. Written documents and other physical evidence shall be received upon being identified, authenticated, and showing of relevance to the action.

D. Official Documents. Official documents or an official law, record or copy thereof, may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it purports to be.

E. Record of Excluded Evidence. In an action tried to a jury, excluded evidence may upon request be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the Court, the Judge may receive such excluded testimony into the record.

RULE 20. SUBPOENAS.

A. Issuance. Subpoenas for attendance of witnesses or production of documents or things shall be issued and served as provided elsewhere in this Tribal Code.

B. Failure to Appear. A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of Court and/or the Court may order his arrest for the offense of Failure to Obey a Lawful Order of the Court.

C. Subpoena Unnecessary. A person present in Court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena.

RULE 21. JURORS.

A. Number of Jurors; Alternate. There shall be six jurors chosen to hear a case plus the Court may allow one additional juror to be chosen as an alternate juror. In the event that an alternate juror is chosen and hears the case, he shall be dismissed prior to the jury's deliberation if not needed, and treated like a regular juror if needed.

B. Examination of Jurors. The Court shall permit the parties or the attorneys to conduct the examination of prospective jurors and may it examine the jurors.

C. Challenges.

(1) A challenge is an objection made to a potential trial juror. Either party may challenge jurors but where there are several parties on either side, they must join in a challenge before it can be made.

(2) Challenges to jurors are either peremptory or for cause. Each party or side shall be entitled to three peremptory challenges.

(3) Challenges for cause shall be made against a potential juror on the grounds that he is not entitled or qualified to be a juror, he is familiar with the case or has formed an opinion disagreement regarding the testimony, the jury may request additional instructions from the Court, such to be given on the record after notice to the parties or their counsel.

D. Selection of Jury. The Clerk shall draw lots to determine potential jurors and shall replace jurors for whom a challenge is sustained until a full panel is completed. Upon completion, the Clerk shall administer the oath to the jurors, the form of which shall be prescribed by rule of the Court.

E. Discharge of Juror. If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform his duty, the alternate juror shall take his place; if there is no alternate juror, the parties may agree to complete the action with the other jurors. If no agreement can be reached, the judge shall discharge the jury and the case shall be tried with a new jury.

G. View of Jury. The Court may, for good cause shown, allow the jury to view the property or place of occurrence of a disputed or otherwise relevant event.

H. Separation of the Jury. Any time prior to their verdict when the jurors are allowed to leave the courtroom, the Judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion on the case until the case is submitted to the jury for their decision.

I. Deliberation. Once the case is submitted to them, the jury shall retire to deliberate in private under the charge of an officer of the Court, who will refrain from communicating with them except to inquire whether they have reached a verdict, and he shall prevent others from improperly communicating with the jury.

J. Things Taken by Jury. The jury may take with them when deliberating any of the following: taken by a non-juror.

K. Additional Instructions. If after the jury retires, there is some question on an instruction or other point of law or entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

L. Waiver of Undertaking. In all cases, the parties may, by written stipulation, waive the requirements of this rule with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by these rules a deposit in Court in the amount of such undertaking, or such lesser amount as the Court may order, is equivalent to the filing of the undertaking.

M. No Verdict. If the jury is discharged before rendering their verdict or for any reason prevented from giving a verdict, the action shall be retried.

N. Declaration of the Verdict. When all or at least five of the six Jury members agree on a verdict, they shall so inform the officer who shall notify the Court. The jury shall be conducted into the Courtroom and the Clerk shall call the jury roll; the verdict shall be given in writing to the Clerk and then read by the Clerk for the Court; inquiry shall be made by the Court to the jury foreman as to whether such as their verdict. Either party may have the jury polled individually to determine if such is, in fact, their verdict. If insufficient jurors agree with the verdict,

the jury shall be sent out again to reconsider; otherwise, the verdict is complete and the jury shall be dismissed. If the verdict is read or recorded incorrectly by the Clerk or foreman, the jury shall retire to correct the verdict.

RULE 22. SPECIAL VERDICTS AND INTERROGATORIES.

The Court may require the jury to return their verdict in the form of specific findings on specified issues or may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

RULE 23. INSTRUCTIONS TO THE JURY; ARGUMENTS.

A. Instructions. At the close of the evidence or at such earlier time as the Court may direct, any party may file written requested instructions for the Court to give to the jury. The Court shall inform the parties or their counsel of the instructions it intends to give and hear argument thereon out of the hearing of the jury.

B. Arguments. Final arguments for the parties shall be made after the jury has been instructed. The Court shall not comment on the evidence of the case and, if it should restate any of the evidence, it shall inform the jury that they are the sole judges of the facts.

RULE 24. MOTIONS FOR DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

A. Motion for a Directed Verdict. A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no motion had been made in the event that the motion is denied. A motion for directed verdict shall state the grounds therefore and may be granted by the Court without the assent of the jury.

B. Motion for Judgment Notwithstanding the Verdict. A party who has made a motion for a directed verdict at the close of all the evidence, which motion has been denied or not granted, may, within 10 days after entry of judgment move to have the verdict and any judgment entered thereon set aside and entered according to his motion for directed verdict; or if there has been verdict, the party may so move within 10 days after the jury has been discharged. A motion for a new trial may be made in the alternative. The Court shall enter judgment or make any orders consistent with his decision on the motions.

RULE 25. FINDINGS BY THE COURT.

In cases tried without a jury, and except in cases where a party defaults, fails to appear or otherwise waives such, findings of fact and conclusions of law shall be made by the Court in support of all final judgments. Upon its own motion or the motion of any party within ten days of the entry of judgment, findings may be amended or added to and the judgment may be amended accordingly.

RULE 26. JUDGMENT; COSTS.

A. Definition. A judgment includes any final order from which an appeal is available and no special form of judgment is required.

B. Judgment on Multiple Claims. When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court's specifically finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period commence to run.

C. Demand for Judgment.

(1) Generally. Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It may be given for or against one or more of several claimants; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.

(2) Judgment by Default. A judgment by default shall, not be different in kind from, nor exceed in amount, that specifically prayed for in the demand for judgment.

D. Costs. Unless the Court shall otherwise direct, the Court shall allow necessary costs and disbursements to the prevailing party or parties as a matter of course. Such prevailing party shall file with the Court a verified memorandum of his costs and necessary disbursements within five days of the entry judgment and serve a copy of such on the opposing party, and if such are not objected to within 10 days, they shall be deemed to be a part of and included in the judgment rendered. The Appellate Court may award costs in a like manner.

F. Attorney's Fees. The Court shall not award attorney's fees in a case unless such have been specifically provided for by a contract or agreement of the parties under dispute, or unless it reasonably appears that the case has been prosecuted for purposes of harassment only, or that there was no reasonable expectation of success on the part of the affirmatively claiming party. In any action in which the Tribe and/or any of its officers or employees are sued for a cause of action arising out of, or in the course of, the performance of a Tribal function or duty, or in any action, except by the Tribe, against the bond of any such officer or employee, if judgment shall be against the Plaintiff the Court shall award a reasonable attorney's fee against such plaintiff and in favor of the defendant or defendants.

RULE 27. DEFAULT.

A. Entry of Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, his default may be entered by the Clerk and judgment by default granted. Once the default is entered no further notice to the defaulting party of any action taken or to be taken need be given.

B. Judgment by Default. Judgment by default may be entered by the Clerk if a party's claim against the opposing party is for a sum of money, which is or can by computation be made certain, and if the opposing party has been personally served on the reservation. Otherwise, judgment by default can be entered only by the Court upon receipt of whatever evidence the Court deems necessary to establish the claim. No judgment by default shall be entered against the Zuni Tribe.

C. Setting Aside Default. The Court may, for good cause shown, set aside either an entry of default or a default judgment.

RULE 28. SUMMARY JUDGMENT.

Any time 20 days after commencement of an action, any party may move the Court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions, which shall be served not less than 10 days prior to the hearing on said motion, may be supported by affidavits, discovery, or memoranda, all of which must be made available to opposing parties at least 2 days prior to the hearing

RULE 29. ENTRY OF JUDGMENT.

A. Judgment. Judgment upon verdict of a jury shall be signed by the Clerk and filed. All other judgments shall be signed by the Judge and filed with the Clerk.

B. Effectiveness; Recordation. A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The Clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket.

C. Death of a Party. If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.

D. Satisfaction of Judgment. A judgment may be satisfied, in whole or in part, as to any or all of the judgment. debtors by the owner thereof or his attorney of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction. A Judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The Clerk shall file all satisfactions of judgment and note the amount thereof in the register of actions and the judgment docket.

E. Effect of Satisfaction; Limitation. A judgment satisfied in whole, with such fact being entered in the judgment docket, shall cease to operate as such. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained any time prior to the expiration of 8 years and will extend the period of limitation an additional 8 years may be thereafter further extended by the same procedure.

RULE 30. NEW TRIALS; AMENDMENTS OF JUDGMENT.

A. Grounds; Time. Any party may petition for a new trial on any or all of the issues presented by serving a motion not later than 10 days after the entry of judgment, for any of the following causes:

- (1) error or irregularity which prevented any party from receiving a fair trial; or
- (2) misconduct of the jury or jury members; or
- (3) accident or surprise, or newly discovered evidence which ordinary prudence could not have guarded against or produced at trial; or

(4) damages so excessive or inadequate that they appear to have been given under influence of passion or prejudice; or

(5) insufficiency of the evidence to justify the verdict or other decision, or that it is contrary to the law; or

(6) error in law.

B. Harmless Error. A new trial shall not be granted on the basis of error or irregularity, which was harmless in that it did not affect substantial justice.

C. Support for Motion. Parties may include memoranda or affidavits in support of their motions to which reply memoranda and affidavits shall be allowed if desired.

D. Court Initiative. The Court may, on its own initiative, not later than 10 days after entry of judgment, order a new trial on any grounds assertable by a party to the action, and shall specify the reasons for so ordering.

E. Motion To Alter Or Amend Judgment. A motion to alter or amend a Judgment shall be served not later than 10 days after entry of the judgment.

RULE 31. RELIEF FROM JUDGMENT OR ORDER.

A. Clerical Mistakes. The Court at any may correct clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission time of its own initiative or on the motion of any party and after such notice as the Court may direct; mistakes may be corrected before an appeal is docketed in the Appellate Court, and thereafter while the appeal is pending may be corrected with leave of the Appellate Court.

B. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 29 A; (3) fraud, misrepresentation or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4) not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a Court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the Court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

RULE 32. HARMLESS ERROR.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties, is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding shall disregard any error or defect in the proceeding, which does not affect the substantial rights of the parties.

RULE 33. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.

A. Stay Upon Entry of Judgment. Proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the Court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

B. Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment or of a motion for relief from a judgment or order, or of a motion for judgment in accordance with a motion for a directed verdict, or of a motion for amendment to the findings or for additional findings.

C. Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

D. Stay Upon Appeal. When an appeal is taken the appellant by giving a bond in an amount set by the Court may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given at or within 10 days after the time of filing the notice of appeal. The stay is effective when the bond is approved and received by the Court.

E. Stay in Favor of the Tribe, or Agency Thereof. When the Tribe, or an officer or agency of the Tribe takes an appeal, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

F. Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of an appellate court or of a Judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

G. Stay of Judgment Upon Multiple Claims. When a Court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 25, the Court may stay enforcement of that judgment until the regarding the case, or if for any other reason it appears likely or reasonably possible that a juror will not be able to render a fair, impartial verdict. The Judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.

RULE 34. DISABILITY OF A JUDGE.

If by reason of death, sickness, or other disability, a Judge before whom an action has been tried is unable to perform the duties to be performed by the Court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the Court may perform those duties; but if such other Judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

RULE 35. INJUNCTIONS.

A. Preliminary Injunction; Notice. No preliminary injunction shall be issued without notice to the adverse party.

B. Temporary Restraining Order; Notice; Rehearing; Duration. No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; and shall be filed forthwith in the Clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 15 days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matter of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining orders without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

C. Security. Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sums as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Zuni Tribe, or of an officer, or agency, of either; nor shall it be required of a married person in a suit against the other party to the marriage contract. A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court who shall forthwith mail copies to the persons giving the security if their addresses are known.

D. Form and Scope of Injunction or Restraining Order Service. Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not be reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants,

employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

E. Grounds for Injunction. An injunction may be granted:

(1) When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act complained of, either for a limited period or perpetually;

(2) When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;

(3) When it appears during the litigation that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;

(4) In all other cases where an injunction would be proper in equity.

RULE 36. EXTRAORDINARY WRITS.

A. Grounds for Relief. Where no other plain, speedy and adequate remedy exists, relief may be obtained by obtaining an extraordinary writ, which may be granted, for anyone of the following grounds:

(1) Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of his office; or

(2) Where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; or

(3) Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal, board or person; or

(4) Where the relief sought is to arrest the proceedings of any tribunal, board or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

B. Habeas Corpus. Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise restrained of his liberty. Upon the filing of the Complaint the Court shall, unless it appears from such complaint or the showing of the Plaintiff that he is not entitled to any relief, issue a writ directed to the defendant commanding him to bring the person alleged to be restrained before the Court at a time and place therein specified, at which time the Court shall proceed in a summary manner to hear the matter and render judgment accordingly. If the writ is not issued, the Court shall state its reasons therefore in writing and file the same with the complaint, and shall

deliver a copy thereof to the plaintiff. If the defendant cannot be found, or if he does not have such person in custody, the writ (and any other process issued) may be served upon anyone having such person in custody, in the manner and with the same effect as if he had been made defendant in the action.

The defendant shall appear at the proper time and place with the person designated or show good cause for not doing so and must answer the complaint within the time allowed. The answer must state plainly and unequivocally whether he then has, or at any time has had the person designated under his control and restraint, and if so, the cause thereof. If such person has been transferred, the defendant must state that fact, and to whom, and when, the transfer was made, and the reason or authority therefore. The writ shall not be disobeyed for any defect of form or misdescription of the person restrained or defendant, if enough is stated to show the meaning and intent thereof.

The person restrained may waive his right to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter the Court may place such person in the custody of such individual or individuals as may be deemed proper.

C. Habeas Corpus; Decision. In each case, the Court, upon determining the case, shall enter specific findings of fact and conclusions of law and judgment, in writing, and the same shall be made a part of the record in the case. If the Court finds in favor of the complainant, it shall enter an appropriate order with respect to judgment or sentence in the former proceedings and such further orders with respect to re-arraignment, retrial, custody, bail, or discharge as the Court may deem just and proper in the case.

D. Habeas Corpus Availability. Except in cases of extraordinary injustice, habeas corpus relief shall not be available to a person incarcerated as a result of a criminal conviction where the alleged grounds for relief have been or could have been raised by an appeal following the conviction.

RULE 37. EXECUTION.

A. Interrogatories. Immediately upon the entry of a judgment awarding money damages, costs and/or attorney's fees against a party, unless such judgment has been properly stayed, the prevailing party may serve interrogatories upon the judgment debtor to inquire as to the status of said person's financial affairs and ability to pay said judgment. Said interrogatories shall be served either by personal service or by certified mail, return receipt requested, on the judgment debtor, who shall answer the same in spaces provided on the interrogatories, in writing and under oath, within 15 days of receipt of the same. The original copy of the answers shall be filed with the Court, and a copy, if provided by the prevailing party, shall be served upon the prevailing party. The party upon whom the interrogatories are served may, in the alternative, tender to the prevailing party all amounts then due under the judgment, in which case the prevailing party shall forthwith file a satisfaction of judgment with the Court.

B. Appearance of Judgment Debtor. In the event that the judgment debtor fails to respond to the interrogatories in the period specified, or the answers thereto are shown to be false, misleading, or otherwise inadequate, the Court may order that the judgment debtor appear before it to answer concerning his property.

C. Time for Execution. Except upon good cause shown giving adequate justification therefore, no execution shall issue until the judgment debtor has been served with interrogatories and given the opportunity to pay the judgment or respond to the interrogatories.

D. Execution. A writ of execution shall be issued by the Court and shall direct the Tribal Police to seize as much of the personal property of the judgment debtor as reasonably appears necessary to satisfy the judgment amount. The Tribal Police shall at a public auction conduct Sale of the seized property after giving not less than 10 days' public notice posted conspicuously in three public places on the Reservation. Property shall be sold to the highest bidder who shall make payment for the property at the time of sale. The person conducting the auction may postpone such in his discretion if there is inadequate response to the auction or the bidding, and may reschedule such upon giving the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting the details of the sale.

E. Exemption from Execution. The Court shall only order seizure and sale of such property of the judgment debtor to satisfy a money judgment the loss of which will not impose an immediate substantial hardship on the immediate family of the judgment debtor. Only property of the judgment debtor himself may be subject to execution and not property of his family.

F. Redemption from Sale. At any time within 6 months after sale under this Rule, the judgment debtor may redeem his property from the purchaser thereof by paying the amount such purchaser paid for the property plus 8 percent interest, plus any expenses actually incurred by the purchaser, such as taxes and insurance, to maintain the property.

RULE 38. APPEAL.

A. Appellate Court. All appeals from the Tribal Court shall be heard and decided by the Appellate Court.

B. Right to Appeal. Any party who is aggrieved by any final order, commitment or judgment of the Tribal Court may appeal in the manner prescribed by this Rule.

C. Time; Notice of Appeal. Within 20 days from the entry of the order of judgment appealed from the party taking the appeal must file with the Tribal Court a written notice of appeal specifying the parties to the appeal, the order or judgment appealed from, and a short statement of the reason or grounds for the appeal. The Clerk shall file the notice and mail copies, to be provided by the appealing party, to all other parties to the appeal at their last known address.

D. Parties. The party taking the appeal shall be referred to as the appellant; all other parties shall be referred to as the respondents. The name of the case shall be the same as that used in the Tribal Court.

E. Bond on Appeal. At the time of filing the Notice of Appeal, the appellant shall also file cash or a bond in an amount set by the Tribal Court sufficient to guarantee performance of the judgment if such performance is stayed on appeal plus, in any event, sufficient to guarantee payment of such costs or interest as the Appellate Court may award.

F. Stay Pending Appeal. In any case in which an appeal is perfected as required by this Rule, the appellant may petition the Tribal Court for an order staying the order, commitment or judgment rendered conditioned upon execution of a bond to guarantee performance of the judgment, order or commitment. A stay shall be granted in all cases in which it is requested unless manifest injustice would result there from.

G. Clerk. The Clerk of the Tribal Court shall also serve as the Clerk of the Appellate Court. Within 5 days after a Notice of Appeal is filed, the Clerk shall prepare, certify and file with the Appellate Court all papers comprising the record of the case appealed. A separate docket shall be maintained for the Appellate Court in which shall be recorded each stage of the proceedings on each case appealed.

H. Briefs and Memoranda. Within 30 days of the filing of the Notice of Appeal or within such longer time as the Appellate Court shall allow, the appellant shall file a written brief, memorandum or statement in support of his appeal. An original and three copies shall be filed with the Clerk and one additional copy shall be served upon or mailed to each other party or his counselor or attorney. The respondent shall have 30 days after receipt of the appellant's brief, memorandum or statement within which to file a reply brief, memorandum or statement and shall file and serve such in the same manner as the appellant's brief, memorandum or statement. No further response shall be allowed either party without leave of Court.

I. Argument. The Appellate Court shall decide all cases upon the briefs, memoranda and statements filed plus the record of the Tribal Court without oral argument unless either party requests oral argument and shows to the Court that such will aid the Court's decision, or unless the Court decides on its own motion to hear oral argument. There shall be no right to a trial de novo (new trial) in the Appellate Court.

J. Decision. The Appellate Court shall issue a written decision and all judgments on appeal shall be final. The decision may be made on the basis of facts and/or issues of law stipulated to by the parties and, if the parties so stipulate, without or with less than all of the record and/or verbatim transcript, in addition to briefs, memoranda or statements of the parties. The decision of the Appellate Court shall affirm,

RULE 39. FORMS.

Any forms adopted for use in the Courts are illustrative only and not mandatory unless specifically so specified.

RULE 40. COURT RULES.

A. The Chief Judge of the Tribal Court, with the approval of the Tribal Council, may adopt Court Rules not inconsistent with these Rules and in supplement thereto.

B. If no procedure is specifically prescribed by rule, the Court may proceed in any lawful manner not inconsistent with the Rules or the principles of justice and fairness underlying these Rules.

RULE 41. CITATION.

These Rules shall be known as the Zuni Rules of Civil Procedure and may be abbreviated Z.R.C.P.

END OF TITLE II. ZUNI RULES OF CIVIL PROCEDURE

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TITLE III. ZUNI RULES OF CRIMINAL PROCEDURE [March 11, 2014, Resolution No. M70-2014-Q020]

Rule 1. Scope, Construction and Title.

A. Scope. These rules shall govern the procedure in all criminal proceedings in the Zuni Tribal Court.

B. Construction. These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

C. Title. These rules shall be cited by rule number, as in ZTC, Rule ____.

Rule 2. Entry of Appearance.

A. Writing Required. Whenever an attorney or lay counsel undertakes legal representation of a defendant in any criminal action, he shall file a written entry of appearance in the cause. For the purpose of this rule, the filing of any pleading signed by legal counsel constitutes an entry of appearance.

B. Continuation of Representation. Any attorney or lay counsel who has entered an appearance or who has been appointed by the court shall continue such representation until relieved by the court.

Rule 3. Service and Filing of Pleadings and Other Documents.

A. Service; When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the initial criminal complaint, every order entered in open court, every document relating to discovery required to be served on the other party, unless the court otherwise orders, every written motion other than one which may be heard *ex parte* and every written notice, appearance, demand, designation of record on appeal, and similar document shall be served on each of the parties.

B. Service; How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney or lay counsel, the service shall be made upon the attorney or lay counsel unless service upon the party is ordered by the court. Service upon the attorney or lay counsel or the party shall be made by delivering a copy to attorney, lay counsel or party, or by mailing a copy to the attorney, lay counsel or party at the attorney's or lay counsel's or party's last known address, or, if no address is known, by leaving it with the clerk of the court. Service by mail is complete upon mailing.

C. Definitions. As used in this rule:

(1) "delivery of a copy" means:

(a) handing it to the attorney or lay counsel, or to the party;

(b) sending a copy by facsimile to the attorney, lay counsel, or party;

or

(c) leaving it at the attorney or lay counsel's office with a clerk or other person employed by the attorney or lay counsel.

(2) "mailing a copy" means sending a copy by first class mail with proper postage.

D. Filing Certificate of Service. All papers after the criminal complaint required to be served upon a party, together with a certificate of service indicating the date and method of service, shall be filed with the court within ten days after service.

E. Filing of Pleadings by a Party Represented by Counsel. The Clerk of the Court shall not file a pleading or other document of a defendant who is represented by an attorney or lay counsel, unless the pleading or document is a request to dismiss the attorney, or lay counsel, or to appear *pro se*. If the pleading or document is a request to dismiss the attorney or lay counsel, or to appear *pro se*, the Clerk of the Court shall serve a copy of the pleading or document on all counsel of record in the proceeding.

F. Proof of Service. Proof of service of pleadings and documents shall be made by the certificate of service indicating the date and method of service signed by the attorney or lay counsel of record, or if made by any other person, by the affidavit of such person. Such certificate or affidavit shall be filed with the clerk or endorsed on the pleading, motion or other document required to be served.

Rule 4. Failure to Observe Rules.

An attorney or lay counsel who willfully fails to observe the requirements of these rules, including prescribed time limitation, may be held in contempt of court and subject to disciplinary action.

Rule 5. Conduct of Court Proceedings.

A. Judicial Proceedings. Judicial proceedings shall be conducted with fitting dignity and decorum, in a manner conducive to undisturbed deliberation, indicative of their importance to the Zuni Tribe and to the parties before the court, and in an atmosphere that bespeaks the responsibilities of those who are charged with the administration of justice.

B. Non-judicial Proceedings. Proceedings, other than judicial proceedings, designed and carried out primarily as ceremonies, and conducted with dignity by judges in open court, may be photographed and recorded with the permission and under the supervision of the court.

Rule 6. Record; Exhibits.

A. Record of Proceedings. With the exception of Customary Pretrial Conferences, a verbatim record shall be made of all court proceedings, including:

- (1) arraignment;
- (2) release proceedings;
- (3) motion hearings;
- (4) habeas corpus proceedings;
- (5) extradition proceedings; and

(6) the trial.

B. Return of Exhibits. Unless otherwise ordered by the court, after notice to the parties or their legal counsel in the manner set forth by this rule, all exhibits delivered to the clerk may, upon, written request, be returned to the party or legal counsel tendering the exhibit as evidence.

C. Notice of Disposition of Exhibits. Prior to returning the exhibits to the party or the legal counsel tendering the exhibit as evidence, the Clerk of the Court shall give written notice to all parties or their legal counsel that, unless otherwise ordered by the court, the exhibits in custody of the clerk will be returned to the legal counsel or party tendering the exhibit or otherwise disposed of after the expiration of sixty days from the date of mailing of such notice. The clerk shall give the written notice required by this paragraph:

(1) within ninety days after final disposition of the case, or

(2) if an appeal is filed and a new trial has not been ordered, within thirty days after the filing of the mandate in the Tribal Court.

D. Preservation of Exhibits. Upon motion, the court may order any exhibit to be preserved by the court or disposed of in the manner ordered by the court.

Rule 7. Motions.

A. Writing Required. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing and shall state with particularity the grounds therefore, and shall set forth the relief or order sought.

B. Unopposed Motions. The moving party shall determine whether or not the motion will be opposed. If the motion will not be opposed, an order signed or approved by opposing counsel shall accompany the motion.

C. Opposed Motions. The motion shall state that concurrence of opposing counsel was requested or shall specify why no such request was made. The moving party shall not assume that the nature of the motion obviates the need for concurrence from opposing counsel unless the motion is a:

(1) motion to voluntarily dismiss a petition or complaint;

(2) motion to suppress evidence;

(3) motion for new trial;

(4) motion for judgment notwithstanding the verdict; or

(5) motion to modify a sentence.

The moving party may file with any opposed motion a brief or supporting points with citations and authorities. Affidavits, statements, depositions or other documentary evidence may be filed in support of the motion.

D. Response. A written response shall be filed within ten calendar days after service of the motion. Affidavits, statements, depositions or other documentary evidence in support of the response may be filed with the response.

Rule 8. Orders Preparation and Entry.

A. Preparation of Orders. Upon announcement of the court's decision in any matter, the court shall:

(1) designate the counsel who shall be responsible for preparation of the order or judgment and fix the time within which it is to be submitted; or

(2) prepare its own form of order or judgment.

B. Trial Without a Jury. In a case tried without a jury, the court shall make a general finding and may, on the request of a party, issue findings of fact specifically. Such findings may be oral. If an opinion or memorandum decision is filed, it will be sufficient if the findings of fact appear therein.

C. Time Limit. If no satisfactory form of order or judgment has been submitted within the time fixed by the court, the court shall take such steps as it may deem proper to have an appropriate form of order or judgment entered promptly.

D. Examination by Counsel. In all events, opposing counsel shall be afforded a reasonable opportunity to examine the form of order or judgment and make suggestions or objections thereto before the court signs any order or judgment.

E. Entry by Court. The court must enter the judgment or order within a reasonable time after submission.

INITIATION OF PROCEEDINGS

Rule 9. Initiation of Proceedings.

A. Parties. All criminal proceedings shall be prosecuted in the name of the Pueblo of Zuni, Plaintiff, against the person charged with an offense who shall be referred to as the defendant.

B. Commencement of Prosecution. A prosecution shall be commenced by the filing of a criminal complaint.

C. Complaint. A complaint is a written statement of the essential facts, the common name of the offense and, if applicable, the specific section number of the Zuni Tribal Code which defines the offense.

D. Essential Acts to be Stated in Complaint. A complaint must state:

(1) The name of the person accused, if known, or some other name if not known plus whatever description of the person accused is known;

(2) The date and approximate time of the commission of the offense, if known;

- (3) The general location of where the offense was committed;
- (4) The common name of the offense and code designation of the offense;
- (5) A short and concise statement of the specific acts or omissions to act complained of;
- (6) The person against whom or against whose property the offense was committed, if known; and
- (7) The name and signature of the person filing the complaint.

E. Defects, Errors, and Omissions. A complaint shall not be dismissed, nor shall the trial, judgment or other proceeding be stayed, or in any manner affected, because of any defect, error, or omission therein which does not prejudice the substantial rights of the defendant upon the merits. The court may at any time prior to a verdict cause the complaint to be amended in respect to any such defect, error, or omission, if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

F. Traffic Offense Citations. Uniform Traffic Citations that are approved by the Chief Tribal Judge may be issued and take the place of the complaint in cases involving traffic offenses. In cases involving persons driving under the influence of liquor or drugs, the Uniform Traffic Citation shall be supplemented with a Complaint that conforms with the requirements of paragraphs C and D, above.

G. Fish & Wildlife Offenses. Zuni Tribal Rangers shall file the original of the Uniform Citation that was issued to the defendant with the Court supplemented with a Complaint that conforms with the requirements of paragraphs C and D, above.

H. Filing of Complaint. Upon the filing of a complaint signed by the Tribal Prosecutor, a full-time and commissioned tribal, state or county law enforcement officer, or Tribal Ranger, the court shall docket the action.

Rule 10. Joinder; Severance.

A. Joinder of Offenses. Two or more offenses shall be charged in one complaint with each offense stated in a separate count, if such offenses are of the same or similar character, or are based on the same act or transaction or constitute parts of a common scheme or plan.

B. Joinder of Defendants. Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction constituting an offense. Such defendants may be charged in one or more counts together or separately and all of such defendants need not be charged on each count.

C. Motion for Severance. If it appears that a defendant or the Pueblo of Zuni may be prejudiced by a joinder of offenses or of defendants, the Court may order separate trials of offenses, grant severance of defendants, or provide whatever other relief justice may require.

Rule 11. Issuance of Warrant for Arrest and Summons.

A. Time. Upon the docketing of any criminal complaint, the court may issue a summons or arrest warrant to bring the defendant named in the complaint before a judge of the tribal court.

B. Basis for Warrant. A warrant of arrest may issue in cases in which a Class A offense is charged. A person charged with the commission of a Class B or Class C offense shall be issued criminal summons, unless the court has reasonable grounds to believe that the person will not appear upon being served with a summons.

C. Form of Warrant. A warrant of arrest shall be signed by the presiding judge and shall contain the name of the defendant or, if his name is not known, any name and a reasonable description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged and shall command that the defendant be arrested and brought before the court to enter a plea to the charge.

D. Form of Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court within five days from the date of service to enter a plea.

Rule 12. Service of Summons; Failure to Appear.

A. Service. A summons shall be served in accordance with the rules governing service of process in civil actions unless the court authorizes service by mail. A copy of the complaint shall be attached to the summons. Service by mail is complete upon mailing.

B. Failure to Appear. If a defendant fails to appear in person, or by legal counsel when permitted by rules of the court, at the time and place specified in the summons, the court shall issue a warrant for the defendant's arrest.

Rule 13. Arrests Pursuant to Warrant; Without Warrant.

A. Duty upon Arrest. Whenever a defendant is arrested pursuant to an arrest warrant, the defendant shall be brought before the court without unnecessary delay to enter a plea.

B. Service of Warrant. Service of an arrest warrant may be accomplished at any place within the exterior boundaries of the Zuni Reservation. If the arresting officer has the arrest warrant in his possession at the time of the arrest, a copy shall be served upon the defendant upon his arrest. If the officer does not have the warrant in his possession at the time of the arrest, the officer shall then inform the defendant of the offense and of the fact that a warrant has been issued and shall serve the warrant on the defendant as soon as practicable.

C. Return. The arresting office shall file a return of service of the arrest warrant with the court within 24 hours of the defendant's arrest. The date, time, and place of service or arrest shall be stated on the warrant or summons together with the name of the person who may have served the warrant or summons. A copy of the warrant or summons endorsed by the person serving the same shall be provided to the defendant.

D. Arrests Without a Warrant. If a defendant is arrested without a warrant, a criminal complaint shall be prepared and a copy shall be given to the defendant prior to the defendant's release from custody or prior to the defendant's arraignment. If the defendant is in

custody and the court is open for business, a criminal complaint shall be immediately filed with the court. If the court is not open and the defendant remains in custody, the complaint shall be filed on the next business day of the court.

Rule 14. Search Warrants.

A. Issuance. A search warrant may be issued by a Tribal Judge on the request of the Tribal Prosecutor, a full-time salaried tribal police officer, tribal ranger, or any officer of the United States authorized to enforce or assist in enforcing any federal law. A warrant may be issued to search for and to seize any:

- (1) property which has been obtained or is possessed in a manner which constitutes a criminal offense;
- (2) property designed or intended for use or which is or has been used as the means of committing a criminal offense;
- (3) property which would be material evidence in a criminal prosecution; or
- (4) person alleged to be a victim of a crime, or for whom an arrest warrant has been issued or for an alleged fugitive from justice.

B. Contents. A search warrant shall be executed by a full-time salaried tribal police officer, tribal ranger, or any officer of the United States authorized to enforce or assist in enforcing any federal law. The warrant shall contain or have attached the sworn statement of facts showing probable cause for its issuance and the name of any person whose sworn statement has been taken in support of the warrant. A search warrant shall specifically identify the property and name or describe the person or place to be searched and the property to be seized. The warrant shall direct that it be served between the hours of 6:00 a.m. and 10:00 p.m., according to local time, unless the issuing judge, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at any time.

C. Execution. A search warrant shall be executed within ten days after the date of issuance. The officer seizing property under the warrant shall give to the person from whom or whose premises the property was taken a copy of the affidavit for search warrant, and the search warrant, and a copy of the inventory of the property taken or shall leave copies of the affidavit for search warrant, and the search warrant, and a copy of the inventory at the place from which the property was taken.

D. Return. The return shall be made promptly after execution of the warrant. The return shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken.

E. Probable Cause. As used in this rule, "probable cause" shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay is credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant the court may require the affiant to appear personally and may examine the affiant under oath and any witnesses he may produce to determine whether probable cause exists to issue the warrant.

F. Search Without a Warrant. Any law enforcement officer may stop any person in a public place if he has probable cause to believe said person is in the act of committing a criminal offense, or has committed a criminal offense or is attempting to commit a criminal offense and demand of him his name, address, and explanation of his actions, and may, if he has reasonable grounds to believe his own safety or the safety of any person nearby is endangered, conduct a frisk type search for weapons on person(s) detained.

Rule 15. Motion to Suppress.

A. Property. Any person aggrieved by a search and seizure may move the court for the return of the property and to suppress its use as evidence.

B. Time for Filing. A motion to suppress shall be filed within 20 days after the entry of a plea, unless, upon good cause shown, the court waives the time requirement of this rule.

C. Hearing. The court shall receive evidence on any issue necessary to the decision of the motion. If the motion is granted the property shall be returned to the rightful owner, unless otherwise subject to lawful detention.

PRETRIAL PROCEEDINGS

Rule 16. Arraignment.

A. Purpose. The purpose of the arraignment is to bring the defendant before the court; to advise the defendant of the nature of the charges that have been filed against him; to advise the defendant of his rights under the law; and to ask the defendant to enter a plea.

B. Time of Arraignment. As soon as reasonably possible after arrest but not more than 48 hours thereafter, or within the period designated on the summons, the defendant shall appear or be brought before a Tribal Judge. At arraignment the defendant shall be informed of his right to retain legal counsel at his own expense. If the defendant desires to obtain legal counsel but does not presently have counsel, the defendant will be given reasonable time to secure legal counsel before entering his plea.

C. Appearance by Defendant. The defendant may appear at arraignment:

- (1) by way of a two way audio-visual communication in accordance with Paragraph J of this rule; or
- (2) in open court.

D. Reading of Complaint. The bailiff, probation officer, or Clerk of the Court shall deliver to the defendant a copy of the Complaint to the defendant, if the defendant has not already been provided with a copy. The Court will then read the complaint to the defendant and shall ask the defendant to enter a plea.

E. Pleas. A defendant charged with a criminal offense may enter a plea of: Guilty, Not Guilty, or No Contest.

F. Refusal to Plead. If the defendant refuses to enter a plea or stands mute, the Court shall direct the entry of a plea of not guilty on the defendant's behalf.

G. Advice of Defendant. The Court shall not accept a plea of guilty or no contest without first, by addressing the defendant personally in open court, informing the defendant of and determining the defendant understands the following:

- (1) the nature of the charge to which the plea is offered;
- (2) the maximum penalty provided by the Sentencing Guidelines;
- (3) that if the Court accepts the defendant's plea of guilty or no contest, there will not be a further trial of any kind and the defendant thereby waives his rights guaranteed by the Zuni Constitution and the Indian Civil Rights Act; and
- (4) that if the defendant is charged with a crime of domestic violence, a plea of guilty will affect the defendant's constitutional right to bear arms, including receiving, possessing or owning any firearm or ammunition, and may affect the defendant's ability to obtain government employment (tribal, state, or federal).

H. Plea Must be Made Knowingly and Voluntarily. The Court shall not accept a plea of guilty or no contest without first, by addressing the defendant personally in open court, determining that the defendant is capable of knowingly making the plea (i.e. sober and not under the influence of any controlled substance). The Court shall also determine that the plea is being made voluntarily and not the result of force or threats or of promises apart from a plea agreement.

I. Withdrawal of Guilty Plea. The defendant shall not be allowed to withdraw a plea of guilty unless the defendant makes a showing to the court that the plea of guilty was the result of duress, or was not made voluntarily.

J. Audio-visual Appearance. The arraignment of the defendant may be conducted through the use of two-way audio-visual communication, if the following conditions are met:

- (1) the defendant and his legal counsel (if retained by the defendant) are together in one room at the time of the arraignment; and
- (2) the judge, defendant and legal counsel are able to communicate and see each other through a two-way audio-visual system, which may also be heard and viewed in the courtroom by members of the public.

K. Waiver of Arraignment. The defendant may waive formal arraignment by filing a written waiver of arraignment and plea of not guilty.

Rule 17. Plea Agreements.

A. In General. The Tribal Prosecutor or arresting officer and the defendant's legal counsel, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon entering a plea of guilty or no contest to a charged offense or to a lesser offense, the Tribal Prosecutor or arresting officer will move for a dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both. The Court shall not participate in any such discussions.

B. Notice. If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty or no contest in the expectation that a specific sentence will be imposed or that other charges before the court will be dismissed, the plea agreement will

be reduced to writing and filed with the court. The court shall require the disclosure of the agreement in open court at the time the plea is offered. Thereupon the court may accept or reject the agreement, or may defer its decision to accept or reject the agreement until the court has an opportunity to consider a presentence report.

C. Acceptance of Plea Agreement. If the court accepts the plea agreement, the court shall inform the defendant that the agreement will be embodied in the judgment and commitment order to be issued by the court.

D. Rejection of Agreement. If the court rejects the plea agreement, the court shall inform the parties of this fact, advise the defendant in open court that the court is not bound by the plea agreement, afford either party the opportunity to withdraw the agreement and advise the defendant that if the defendant persists in entering a guilty or no contest plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

E. Inadmissibility of Plea Discussions. Evidence of a plea of guilty or no contest, later withdrawn, or of an offer to plead guilty or no contest to a crime charged or to any other crime, or of statements made in connection with any of plea agreement or offers to plea shall not be admissible in any civil or criminal proceeding against the person who made the plea or offer.

Rule 18. Customary Pretrial Conference.

A. Intent. A Customary Pretrial Conference is intended to establish a means to settle criminal disputes in a traditional, customary Indian manner by discussion between the parties before a trusted, impartial trial authority prior to resorting to formal trial procedures that have been adopted from the non-Indian society. The conduct of a Customary Pretrial Conference requires that a formal proceeding be initiated by the filing of a criminal complaint, but anticipates that a great percentage of criminal cases may be settled by resorting to traditional and customary means of settling disputes by the Zuni Tribal Court. The procedures set forth in this Rule shall not be interpreted or applied to deny any person any right otherwise guaranteed by the Constitution of the Zuni Tribe or the Indian Civil Rights Act.

B. Non-Jury Trials. In all cases that are scheduled to be tried without a jury, the Court shall schedule a Customary Pretrial Conference which shall be conducted in the manner set forth in this Rule. Once the case is at issue by virtue of the defendant entering a plea of not guilty, the Court shall summon the defendant, arresting officer, complaining witness(es), and such other witnesses as either side may desire to summon to assist the Court in resolving the issues presented by the facts and law of the case and determine a just disposition of the case should the defendant admit guilt. Such other persons may, but need not include the defendant's spouse or other family members, social workers, domestic violence counselors, probation officers or similar persons having professional training. Due to the nature and purpose of a Customary Pretrial Conference, neither party shall appear at the Customary Pretrial Conference in the company of prosecution or defense counsel or attorneys, advocates or lay counselors. A Customary Pretrial Conference shall not be open to the public.

C. Conduct of Customary Pretrial Conference. There shall be no record or transcript made of the proceedings at the Customary Pretrial Conference, nor shall any statement made by any person during the conduct of the proceeding be used for any purpose should the matter not be resolved and is scheduled for trial. If an agreement is reached on some or all of the issues presented by the case, the judge conducting the Pretrial Conference shall cause a record to be made of the settlement by means of an order or judgment entered into the record of the Court. In the event that some of the issues are not agreed upon, the judge shall cause a Pretrial Order

to be prepared stating what issues have been settled and what issues remain to be tried and shall govern the conduct of any trial subsequently held. The Pretrial Order may also contain agreements, stipulations, or orders of the Court as to the witnesses to be called by the parties, the anticipated testimony of each witness, the exhibits intended to be introduced by the parties, and the conduct of discovery prior to trial.

D. Role of the Judge. The judge conducting the Customary Pretrial Conference shall listen to the positions of the parties and attempt to work out a settlement of all or some of the issues of the case. Any settlement reached during the Pretrial Conference shall be consistent with the laws, ordinances, customs and traditions of the Zuni Tribe.

E. Role of the Defendant. A defendant summoned to appear at a Customary Pretrial Conference shall be required to attend but shall not be required to testify, cooperate or otherwise participate in the Pretrial Conference. The judge conducting the Pretrial Conference shall explain these matters to the defendant at the beginning of the conference. If a settlement is reached which involves an admission of guilt by the defendant, the presiding judge shall determine the voluntariness of the agreement and determine whether the defendant understands the Constitutional rights he is giving up by agreeing to enter a plea of guilty to any or all of the charges pending against the defendant. If a defendant indicates his unwillingness to cooperate or participate in the Pretrial Conference, no further discussion shall be held and the matter shall be scheduled for trial.

F. Agreement of the Parties. No settlement of any issue in a criminal case shall be made at the Customary Pretrial Conference except upon the voluntary agreement of the defendant, which must be approved by the judge conducting the Pretrial Conference. The defendant shall be allowed to consult with counsel of his choosing (at his own expense) if he so desires, prior to agreeing to any portion of a judgment or order settling the case or any issue presented by the case.

RELEASE PROVISIONS

Rule 19. Bail; Release from Custody.

A. Right to Bail. Except as otherwise provided herein, all persons arrested for violation of the Zuni Tribal Code and incarcerated shall be given the opportunity to make bail and released from detention pending their trial or appeal.

B. Bail Schedule.

(1) Class B and Class C Offenses. A bail schedule for Class B and C offenses shall be adopted by rule of the Tribal Court. A defendant may be released from detention at any time prior to arraignment by posting the amount or amounts of bail specified in the bail schedule for the offense or offenses charged; provided however, that if the arresting officer or complaining witness certifies to the arresting officer, or if the jailer certifies based on his own observation, that the defendant is at the time he is brought to the detention center unconscious or in an intoxicated condition, or for any reason does not appear to be in a conscious and sober condition, such defendant shall not be allowed to post bail according to the bail schedule for a period of 8 hours. The defendant shall be informed by the detention officer of his right to make bail at the appropriate time that such is available.

(2) Class A Offenses. Bail for Class A offenses may be set only by a judge upon the consideration of the factors set forth in Paragraph (4) of this rule and must be set or denied within forty-eight hours following the defendant's arrest. The court may deny release on bail pending trial or appeal when a Class A offense is involved and it appears reasonably certain that the defendant will pose a serious threat to the safety and well-being of any person and the community if released, or will fail to subsequently appear if released.

(3) Amount of Bail. At the arraignment or other appropriate time, the court shall set bail at an amount, not to exceed twice the maximum fine payable for the offense charged, which will tend to assure the appearance of the defendant at trial or at such time as his appearance is necessary. A defendant may, at arraignment, request that any bail required by the bail schedule be reduced or that he be released on his own recognizance pursuant to the provisions of Paragraph (4), below.

(4) Factors to be Considered in Determining Conditions of Release. The court shall, in determining the amount of bail and which conditions of release will reasonably assure the appearance of the defendant as required by the court and the safety of any other person and the community, take into account information concerning:

(a) the nature and circumstances of the offense(s) charged, including whether the offense is a crime of violence or involves a controlled substance;

(b) the weight of the evidence against the defendant;

(c) the history and characteristics of the defendant, including:

(i) the defendant's past and present residences;

(ii) any facts tending to indicate that the person has strong ties to the community;

(iii) the defendant's employment status, employment history and financial resources;

(iv) any facts indicating the possibility that the defendant will commit new crimes if released;

(v) the defendant's past conduct, history relating to drug or alcohol abuse, criminal history, and record of non-appearance at court proceedings;

(vi) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and

(vii) whether, at the time of the current offense or arrest, the defendant was on probation, or on any other type of release pending trial, sentencing, or appeal.

(5) Additional Conditions; Conditions to Assure the Orderly Administration of Justice. The court, upon release of the defendant or any time thereafter, may enter an order that such person's release be subject to:

(a) the condition that the defendant not commit any further violation of the Zuni Tribal Code;

(b) a condition that the defendant report on a regular basis to a designated pretrial services program or department agreeing to supervise the defendant;

(c) a condition that the defendant abide by specified restrictions on personal associations, place of abode or travel;

(d) a condition that the defendant avoid all contact with an alleged victim of the offense and with any potential witness who may testify about the offense;

(e) a condition that the defendant refrain from possessing a firearm or other dangerous weapon.

(f) a condition that the defendant undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(g) a condition that a defendant submit to a urine analysis or alcohol test upon request of a person designated by the court;

(h) a condition that the defendant satisfy any other condition that is reasonably necessary to assure the appearance of the defendant as required and to insure the safety of any other person and the community.

(6) Violations of Federal or State Law. Persons incarcerated in the Zuni Detention Center for violation of federal or state laws shall be subject to be released on bail by the jurisdiction under whose authority the arrest was made and according to the provision(s) of the law(s) under which the arrest was made, or pursuant to the extradition law of the Zuni Tribe. A person arrested for violation of federal law shall not be entitled to be released on bail until the prosecution of such charges has been declined by the U.S. Attorney, plus a reasonable time thereafter, not to exceed 36 hours after receipt of notification of such declination, in which charges for violation of the Zuni Tribal Code may be filed.

(7) Form of Bail. The required bail shall be tendered in the form of a money order or certified check payable to: Pueblo of Zuni, Post Office Box 339, Zuni, New Mexico, 87327, or bail bond executed by two or more reliable persons as sureties subject to the jurisdiction of the court and in the form which the court by rule shall direct.

(8) Failure to Appear. If the defendant fails to appear as required, the court shall forfeit the bond posted by the defendant or order the sureties of the bail bond to pay the designated amount to the court. The liability of the sureties may be enforced by order of the court without the necessity of an independent action or judgment.

Rule 20. Release During Trial, Pending Sentence, and Appeal.

A. Release During Trial. A person released upon the payment of a bond shall continue on release under the same terms and conditions as previously imposed, unless the court determines that other terms and conditions are necessary to assure the defendant's presence during trial or to assure that his conduct will not obstruct the orderly administration of justice.

B. Release Pending Sentencing. A person released pending or during trial may continue on release pending imposition of sentence under the same terms and conditions as

previously imposed, unless the court determines that other terms and conditions or termination of release are necessary to assure:

- (1) that such person will not flee the jurisdiction of the court;
- (2) that his conduct will not obstruct the orderly administration of justice; or
- (3) that the person does not pose a danger to any other person or to the community.

C. Release After Sentencing. After the imposition of a judgment and sentence, the court, may upon motion of the defendant, establish conditions of release pending appeal. The court may utilize the criteria listed in Rule 18 (4) and (5), and may also consider the fact of the defendant's conviction and the length of the sentence imposed.

D. Revocation of Bail or Modification of Conditions. The filing of an appeal shall not deprive the court of jurisdiction to revoke bail or to modify the conditions of the defendant's release upon appeal.

DISCOVERY

Rule 21. Disclosure by the Zuni Tribe.

A. Information Subject to Disclosure. Within ten days of a written request made by the defendant, the Zuni Police Department or the Tribal Prosecutor shall disclose or make available to the defendant:

- (1) any statement made by the defendant, or codefendant, or copies thereof, within the possession, custody or control of the Pueblo of Zuni, or otherwise intended to be used by the prosecution at trial;
- (2) any books, papers, documents, photographs, or tangible objects, which are within the possession, custody or control of the Pueblo of Zuni and are intended to be used as evidence at trial, or were obtained from or belong to the defendant;
- (3) any results or reports of physical or mental examinations, and of scientific tests or experiments, including polygraph tests made of the defendant and witnesses, made in connection with the matter before the court;
- (4) a written list of the names and addresses of all witnesses, which the prosecution intends to call at trial, together with any statement made by the witness;
- (5) the defendant's prior criminal record, if any, as is available to the prosecution; and
- (6) any material evidence, which would tend to mitigate or negate the defendant's guilt as to the offense charge, or would intend to reduce his punishment thereof.

B. Examination by Defendant. The defendant may examine, photograph or copy any material disclosed pursuant to Paragraph A of this rule.

C. Certificate of Compliance. The prosecutor or the arresting officer shall file with the court at least ten days prior to trial a certificate stating that all information that has been requested by the defendant has been produced.

D. Information Not Subject to Disclosure. The prosecutor or the arresting officer shall not be required to disclose:

(1) Informants. The existence of or the identity of an informant who will not be called to testify where disclosure would result in substantial risk to the informant or to his effectiveness, provided the failure to disclose will not infringe on the civil rights of the defendant; or

(2) Work Product. The legal research, records, correspondence, or memoranda produced by the prosecutor to the extent that they contain the opinions, theories or conclusions of the prosecutor or members of his investigative staff.

E. Failure to Comply. If the Pueblo of Zuni fails to comply with any of the provisions of this rule, the court may hold the prosecutor or arresting officer in contempt or enter such other order as it deems appropriate under the circumstances.

Rule 22. Disclosure by the Defendant.

A. Information Subject to Disclosure. Within ten days of a written request made by the prosecutor or arresting officer, the defendant or his legal counsel shall disclose or make available to the Pueblo of Zuni:

(1) any books, papers, documents, photographs, or tangible objects, which are within the possession, custody or control of the defendant and which are intended to be introduced in evidence at trial; and

(2) a list of the names and addresses of the witnesses the defendant intends to call at trial, together with any statement made by the witness.

B. Certificate of Compliance. The defendant shall file with the court at least ten days prior to trial a certificate stating that all information that has been requested by the defendant has been produced.

Rule 23. Continuing Duty to Disclose.

A. Additional Material or Witnesses. If at any time prior to or during trial, a party discovers additional material or witnesses, which he would have under a duty to produce or disclose, he shall promptly give notice to the other party or the party's legal counsel of the existence of the additional material or witnesses.

B. Failure to Comply. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with his duty to disclose material or witnesses or with an order issued pursuant to the rules governing discovery, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from calling a witness not disclosed, or introducing in evidence the material not disclosed or hold the prosecutor, arresting officer, or legal counsel for the defendant in contempt of court.

Rule 24. Notice of Alibi; Entrapment Defense.

A. Notice. No less than fifteen days before trial, the defendant shall serve upon the prosecutor or the arresting officer notice in writing of the defendant's intention to introduce evidence of an alibi or evidence of entrapment. The notice of defenses shall be accompanied by a list of those witnesses that the defendant intends to call in support of each noticed affirmative defense.

B. Content of Notice. A notice of alibi or entrapment defense shall contain specific information as to the place at which the defendant claims to have been at the time of the alleged offense, as particularly as known to the defendant or defense counsel, the names and addresses of the witnesses by whom the defendant proposes to establish an alibi or raise the issue of entrapment.

C. Failure to Give Notice. If a defendant fails to serve a copy of such notice as required by this rule, the court may exclude evidence offered by the defendant for the purpose of proving an alibi, except the testimony of the defendant himself. If such notice is given by a defendant, the court may exclude the testimony of any witness offered by the defendant for the purpose of proving an alibi or entrapment if the name and address of such witness was known to the defendant or the defendant's legal counsel but was not stated in the notice.

Rule 25. Subpoena.

A. Form; Issuance. A subpoena is an order of the court issued by a Judge or the Clerk of the Court. It shall contain the name of the court, the title of the case and its criminal docket number. The subpoena shall command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspections of premises, at a time and place therein specified.

B. Service. A subpoena may be served by any police officer, bailiff of the court or other person authorized by the Chief Tribal Judge at any place within the territorial jurisdiction of the Zuni Tribal Court. Service shall be accomplished by delivering a copy of the subpoena to the person named therein.

C. Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories set forth in the subpoena.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

D. Failure to Comply With Subpoena. Failure by any person without adequate excuse to obey a subpoena upon that person may be deemed a contempt of court and prosecution thereof may proceed upon order of the court. No contempt shall be prosecuted unless a return of service of the subpoena has been filed with the court, which sets forth the date, time and place of service and the name of the person who served the subpoena.

TRIALS

Rule 26. Time of Commencement of Trial.

A. Time Limits for Commencement of Trial. The trial of a criminal case shall be commenced six months after whichever of the following events occurs last:

- (1) the date of the defendant's arraignment;
- (2) if a mistrial is declared or a new trial is ordered, the date such order is issued;
- (3) if the defendant is arrested or surrenders in another jurisdiction for failure to appear, the date the defendant is returned to the jurisdiction of this court;
- (4) the date the court allows the withdrawal of a plea or the rejection of a plea made pursuant to Paragraphs A to D of Rule 13.

B. Extension of Time Limit. For good cause shown, the time for commencement of trial may be continued by the court provided that the aggregate of all continuances requested by the Pueblo of Zuni may not exceed six months.

C. Effect of Noncompliance with Time Limit. In the event that the trial of any defendant does not commence within the time specified in Paragraph A of this rule or within the period of any extension granted as provided by this rule, the criminal complaint filed against the defendant shall be dismissed with prejudice.

Rule 27. Pretrial Motions, Defenses and Objections.

A. Scope. This rule shall govern the procedure to be followed between the arraignment and trial unless specifically authorized by another rule.

B. Motions and Demand to be Made Within Twenty Days of Arraignment. The following motions or demand must be made within twenty days following arraignment or shall be deemed to have been waived:

- (1) Motion to dismiss for defects in the complaint;
- (2) Motion to amend the complaint;
- (3) Motions relating to conditions of pretrial release;
- (4) Motion to recuse the presiding judge; and
- (5) Demand for jury trial.

C. Motions to be Made Twenty Days Before Trial. The following motions must be made at least twenty days before trial or shall be deemed to have been waived:

- (1) All discovery motions;
- (2) Motion for severance;

- (3) Motion to name additional witnesses;
- (4) Motion based on denial of a speedy trial;
- (5) Motion raising lack of mental capacity to stand trial;
- (6) All pretrial evidentiary motions, including motions to suppress; and

D. Rebuttal of Presumption of Waiver. A presumption of waiver due to untimeliness may be rebutted by a moving party upon the showing of good cause why the motion was not timely and why granting the late motion will be in the interest of justice.

E. Motion for Continuance. A motion to continue a scheduled hearing, pretrial conference, or trial may be granted for good cause shown. A motion to continue filed less than five days before trial will not be considered unless unforeseeable or exigent circumstances are shown and the moving party did not unreasonably delay in seeking the continuance.

F. Response to Motions. All motions filed pursuant to this rule shall be responded to in writing within ten days of service upon a party opponent.

G. Evidentiary Hearing. If an evidentiary hearing is required, the motion shall be accompanied by a separate written request for an evidentiary hearing, including a statement of the ultimate facts intended to be proven at the hearing. Unless a shorter period of time is ordered by the Court each party shall submit to the other, at least five days before the hearing on the motion, the names and addresses of any witness the party intends to call at the evidentiary hearing, together with any statement subject to discovery made by the witness which has not been previously disclosed.

H. Notice of Withdrawal of Motion. If a motion is scheduled for hearing, the moving party shall give at least five-day notice of his withdrawal of the motion.

Rule 28. Mental Incompetency; Lack of Capacity.

A. Competency to Stand Trial.

(1) The issue of the defendant's competency to stand trial may be raised by motion, or upon the court's own motion, at any stage of the proceedings.

(2) The issue of the defendant's competency to stand trial shall be determined by the judge, unless the judge finds there is evidence, which raises a reasonable doubt as to the defendant's competency to stand trial.

(a) If a reasonable doubt as to the defendant's competency to stand trial is raised prior to trial, the court shall order the defendant to undergo a mental health evaluation. Within thirty days after receiving an evaluation of the defendant's competency, the court, without a jury may determine the issue of competency to stand trial.

(b) If the issue of the defendant's competency to stand trial is raised during trial, the court shall stay further proceeding and order the defendant to undergo a mental health evaluation.

(3) If a defendant is found incompetent to stand trial:

(a) further proceedings in the criminal case shall be stayed until the defendant becomes competent to stand trial;

(b) the court where appropriate, may order treatment to enable the defendant to attain competency to stand trial, and, upon a determination by clear and convincing evidence that the defendant is dangerous, order the defendant detained in a secure facility;

(4) If a finding of incompetency is made during the trial, the court shall declare a mistrial.

(5) The court may, in its discretion, dismiss the charges against any defendant adjudged incompetent at any time and order the defendant to be released from custody.

Rule 29. Jury Trial.

All criminal trials shall be conducted by the court, without a jury, unless the defendant demands a jury trial within twenty days of his arraignment.

A. Composition. The jury shall be composed of six members, with at least one alternate juror. Alternate jurors, in the order in which they are impaneled, shall replace jurors who prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified from performing their duties.

B. Findings and Conclusions; When Required. In a case tried without a jury, the court shall make a general finding of guilt or innocence and shall, upon a request of any party, make specific findings of fact and conclusions of law, which shall be embodied in a written decision within ten days of the general finding by the court, or within such time as the court may designate.

Rule 30. Pretrial Conference; Jury Trial.

A. Mandatory. When a demand for a jury trial is made, the court shall order legal counsel for the parties to appear before it for a pretrial conference, at which time the defendant shall have the right to be present. At the pretrial conference, the prosecutor and the defendant shall:

(1) Specify what pretrial motions each party intends to file;

(2) Finalize the list of witnesses to be called at trial together with a brief description of the intended testimony to be provided by each witness;

(3) Finalize the list of exhibits intended to be introduced by each party;

(4) Determine whether there will be a plea bargain. If a plea bargain is not entered into at the pretrial conference, the court shall not consider any plea bargain agreement thereafter, including the date of the jury trial; and

(5) The prosecutor shall decide whether to dismiss any or all of the charges against the defendant.

B. Failure to Attend. If the prosecutor or the arresting officer fails to attend the pretrial conference or fails to submit the information required above, the court may dismiss the charges pending against the defendant. If the defendant or his legal counsel fails to attend the pretrial conference, the court may appropriately sanction the defendant's legal counsel or issue a bench warrant for the defendant's arrest.

Rule 31. Jurors.

A. Manner of Selection. The jury pool shall be drawn from the list of eligible jurors, prepared as provided elsewhere in this Tribal Code, by the Clerk of the Court, in advance of trial. Jurors to be empaneled shall be drawn by lot from the group of potential jurors by the judge or Clerk of the Court at trial.

B. Examination of Jurors. The court may permit the parties or their legal counsel to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their legal counsel to supplement the examination by such further inquiry as it deems proper.

C. Challenges; procedure. Challenges for good cause and peremptory challenges shall be made outside of the hearing of the jury. The party making a challenge will not be disclosed to the jury panel, but each challenge will be recorded by the clerk. The prosecutor shall accept or make any peremptory challenge as to each juror before the defense is called upon to accept or make any peremptory challenge.

D. Challenges for Cause. The court shall permit the parties to express in the record of trial any challenge to a juror for good cause. The court shall rule upon the challenge and may excuse any juror for good cause.

E. Peremptory Challenges. Each party shall be entitled to exercise three peremptory challenges.

Rule 32. Order of Trial.

The order of trial shall be as follows:

- A. A qualified jury shall be selected and sworn to try the case;
- B. Initial instructions as provided in UJI Criminal shall be given by the court;
- C. The prosecution may make an opening statement. The defense may then make an opening statement or may reserve such opening statement until after the conclusion of the prosecution's case.
- D. The prosecution shall present its case;
- E. Out of the presence of the jury, the court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made;
- F. The defense may then make an opening statement, if reserved;
- G. The defense shall present its case;
- H. The prosecution may submit evidence in rebuttal;

I. At any time before the submission of the case to the jury, the court may for good cause shown permit the prosecution or defense to submit additional evidence;

J. Out of the presence of the jury, the court shall determine the sufficiency of the evidence, whether or not a motion for directed verdict is made;

K. The instructions to be given shall be determined in accordance with Rule 32 of these rules. The court shall then instruct the jury;

L. The prosecution may make its closing argument;

M. The defense may make its closing argument;

N. The prosecution may make a rebuttal only.

Rule 33. Instructions to the Jury.

A. Required Instructions. The court must instruct the jury upon all questions of law essential for a conviction of any crime submitted to the jury.

B. Requested Instructions. At the close of the defendant's case, or earlier if ordered by the court, the parties shall tender requested instructions in writing. The original and such copies as may be required by the court shall be given the court and a copy shall be served on opposing party or legal counsel. The original shall have a place for the court to insert a number, (e.g. No.__) but shall contain no title or other notations. The copies shall include the following information:

(1) [Plaintiff's] [Defendant's] Requested Instruction No.__;

(2) If not in UJI Criminal, authority for the tendered instruction should be given.

C. Advisement of Parties Filing. The court shall advise the parties of the instructions to be given and:

(1) number the originals of the instruction to be given;

(2) mark one copy of each instruction tendered as either given or refused and initial the copies; and

(3) file the marked copies as either given or refused.

D. Objections. Objection to any instruction given must be sufficient to alert the court to the claimed error or vice therein. In the case of failure to instruct on any issue, a correct written instruction must be tendered to the court before the jury is instructed. Before the jury is instructed, reasonable opportunity shall be afforded to legal counsel for the parties to object or tender instructions, on the record.

E. Use in Jury Room. Written instructions of the court shall go to the jury room, but no instruction which goes to the jury room shall contain any notation.

Rule 34. Submission to Jury.

A. Foreman. The court shall direct the jury to select one of its members as foreman to preside over its deliberations.

B. Forms of Verdict. Before the jury retires the court shall submit to it written forms of verdict for its use in returning a verdict.

C. Exhibits. Upon request of the jury to review any exhibit admitted into evidence during trial, the jury shall be furnished with any or all of the exhibits admitted into evidence.

Rule 35. Return of Verdict; Mistrial.

A. Return. The verdict shall be unanimous and signed by the foreman. The verdict shall be returned by the jury to the presiding judge in open court.

B. General Form of Verdict. Except as otherwise specified in this rule, the jury shall in all cases render a verdict finding the defendant either guilty or not guilty.

C. Several Counts. If there are two or more counts or offenses that have been charged, the jury shall specify as to each count or offense of which the defendant has been found guilty or not guilty.

D. Multiple Defendants. If there are two or more defendants, separate verdicts shall be returned for each defendant.

E. Poll of Jury. When a verdict is returned and before the jury is discharged, the jury shall be polled at the request of any party or upon the court's own initiative. If upon the taking of the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations.

F. Irregularity of Verdict. No irregularity in the rendition or reception of verdict of which the parties have been made aware may be raised unless it is raised before the jury is discharged. No irregularity in the recording of a verdict shall affect its validity unless the defendant was in fact prejudiced by such irregularity.

G. Mistrial; Jury Disagreement. An order declaring a mistrial for jury disagreement shall be in writing and shall expressly reserve the right to retrial the defendant.

Rule 36. Discharge of Jury.

The court shall discharge the jury from the cause when:

- A. their verdict has been received and recorded;
- B. the court finds there is no reasonable probability that the jury can agree upon a verdict; or
- C. some other necessity exists for their discharge. The court may in any event discharge the jury if the parties consent to its discharge.

POST TRIAL MOTIONS

Rule 37. Motion for New Trial.

A. Motion. When the defendant has been found guilty, the court on motion of the defendant, or on its own motion, may grant a new trial if required in the interest of justice.

B. Evidence on Motion. When a motion for new trial calls for a decision on any question of fact, the court may consider evidence on such motion by affidavit or otherwise.

C. Time for Making Motion for New Trial. A motion for a new trial based on the ground of newly discovered evidence may be made only within thirty days after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within ten days after verdict or finding of guilty or within such further time as the court may fix during the ten-day period.

D. Grounds for a New Trial. The court may grant a new trial for any of the following reasons:

- (1) the verdict is contrary to law or to the evidence;
- (2) the prosecutor has been guilty of misconduct;
- (3) a juror or jurors have been guilty of misconduct;
- (4) the court has erred as a matter of law, or in the instruction of the jury on a matter of law to the substantial prejudice of the defendant.

E. Admissibility of Juror Misconduct to Impeach the Verdict. When the validity of a verdict is challenged on the ground of juror misconduct, the court may receive the testimony or affidavit of any witness, including members of the jury, relating to the misconduct of a juror, court official, or third person. However, no testimony or affidavit shall be received which inquires into the subjective motives or mental processes which led a juror to assent or dissent from the verdict.

Rule 38. Motion to Vacate Judgment.

A. Motion. The court, on motion of a defendant made within ten days after sentencing, may vacate the judgment.

B. Grounds. The court may vacate the judgment if the court was without jurisdiction of the defendant or the offense charged.

Rule 39. Clerical Mistakes; Harmless Error.

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

JUDGMENT AND APPEAL

Rule 40. Judgment and Sentence.

A. Judgment. If the defendant is found guilty, a judgment of guilty shall be rendered. If the defendant has been acquitted, a judgment of not guilty shall be rendered. The judgment and sentence shall be rendered in open court and thereafter a written judgment and sentence shall be signed by the judge and entered in the official records of the court by the Clerk of the Court.

B. Sentence. Sentence shall be imposed without unreasonable delay. Before the imposition of sentence, the defendant shall be permitted to make a statement in his own behalf and to present any information, including hearsay evidence, in mitigation. The defendant's counsel and the prosecutor shall also be allowed to speak.

C. Sentencing Hearing. The court may set a date and time for sentencing and direct that a presentence report be prepared and submitted to the court by the Probation Office. Pending sentence, the court may continue bail or commit the defendant to jail.

Rule 41. Right to Appeal.

After imposing sentence in a case, which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to file an appeal.

A. How Taken. A notice of appeal must be filed with the court within twenty calendar days of the entry of the final judgment or from an order made after judgment that affects the defendant's substantial rights.

B. Duties of the Clerk of the Court. The Clerk of the Court, upon receipt of the bond ordered by the court, if any, will prepare and transmit to the Southwest Indian Tribal Court of Appeals the record of the case being appealed including a transcript or the record taken in all proceedings relevant to the case. The party taking the appeal shall be referred to as the appellant and the other party as the appellee. The name of the case will be the same as the name used at trial except the names of the parties not involved in the appeal may be omitted.

C. Rules Governing Appeal. Except as otherwise provided herein, the appeal shall be perfected pursuant to the Zuni Rules of Civil Procedure.

Rule 42. Tribal Right to Appeal.

The Pueblo of Zuni shall have the right to appeal from the following:

A. A judgment of dismissal in favor of the defendant upon a motion to dismiss based on any procedural irregularity occurring before trial or during trial;

B. An order vacating judgment or acquitting the defendant contrary to the verdict of the jury or before the verdict is rendered;

C. An order of the court directing the jury to find for the defendant; or

D. An order made after judgment affecting the substantial rights of the Pueblo of Zuni.

Rule 43. Stay of Judgment and Relief Pending Review.

A. Imprisonment. A sentence of imprisonment may be stayed if an appeal is taken and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his sentence in the matter under appeal.

B. Fine and Costs. A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the defendant but the court may require the defendant to post bond, subject to return, if the appeal should favor the defendant and negate the requirement for paying such.

C. Probation. An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

**END OF TITLE III. ZUNI RULES OF CRIMINAL PROCEDURE
[MARCH 11, 2014, RESOLUTION No. M70-2014-Q020]**

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TITLE IV. ZUNI CRIMINAL CODE

CHAPTER 1. GENERAL AND PRELIMINARY MATTERS.

§4-1-1. Name and Citation.

This title shall be known and may be cited as the "Zuni Criminal Code," and references in this title to "Code" shall refer to this Code unless another is clearly indicated.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-1-2. Effective Date.

This Code shall apply to all offenses as herein defined occurring on or after its effective date. If all or any part of any offense was committed prior to such date, the offense shall be governed by the prior existing law except that defenses enumerated herein shall apply to all offenses tried after the effective date.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-1-3. Purpose and Construction.

(1) The provisions of this Code shall be construed in accordance with these general principles and purposes:

(a) To forbid and prevent the commission of offenses and give fair warning of conduct, which is declared to be an offense;

(b) To define adequately the conduct and mental state, which constitute each offense and safeguard conduct that is without fault from condemnation.

(c) To prescribe penalties which are proportionate to the seriousness of the offense and which permit recognition of differing rehabilitative needs [of] individual offenders while at the same time recognizing the need of society to protect itself, when necessary, from offenders;

(d) To prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons.

(2) This Code shall not be strictly construed but shall be construed according to the fair import of the terms used to promote fairness and justice and accomplish the general purposes set forth herein.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed omitted the word "of" in Section-(1)(c), and "[of]" has been so-inserted to correct the omission.)

§4-1-4. Exclusiveness of Offenses.

No conduct constitutes an offense unless so declared by this Code, or by any other provisions of this Tribal Code, or by any other Tribal resolution or ordinance or by federal law.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-1-5. Civil Liability Unaffected.

This Code does not change, suspend or otherwise affect any civil or other liability, other than criminal liability as defined herein, which would otherwise arise from any conduct defined herein.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-1-6. Prosecution for Multiple Offenses.

When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

- (1) one offense is included in the other; or
- (2) one offense consists only of a conspiracy, solicitation, or an attempt to commit the other; or
- (3) inconsistent findings of fact are required to establish the offenses; or
- (4) the offenses only differ in that one is defined to prohibit a specific kind of conduct and the other prohibits the same conduct generally; or
- (5) the offense is defined, as a continuing course of conduct and the defendant's course of conduct were uninterrupted, unless the Code provides that specific periods of such conduct constitute separate offenses.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also Mutte v. Pueblo of Zuni, 20 SWITCA Rep. 11 (2009) (Issues related to lesser included offenses must be raised by the defense, either at the time of arraignment, by a motion during the proceedings or through jury instruction; If the issue of lesser included offenses is not raised by the defense prior to submitting jury instructions, it can only be raised through written requests for a specific jury instruction related to lesser included offenses; If the jury instructions are improperly presented, the jury cannot apply the law as it applies in lesser included offenses).)

§4-1-7. Limitation.

Except as provided in the next section below, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal

episode, if such offenses are known to the prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of the Tribal Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-1-8. Included Offenses.

(1) A defendant may be convicted of an offense included in an offense charged in the complaint without having been specifically charged with such included offense. An offense is so included when:

(a) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(b) it consists of an attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or

(c) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

(d) The Court need not charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also Mutte v. Pueblo of Zuni, 20 SWITCA Rep. 11 (2009) (Issues related to lesser included offenses must be raised by the defense, either at the time of arraignment, by a motion during the proceedings or through jury instruction; If the issue of lesser included offenses is not raised by the defense prior to submitting jury instructions, it can only be raised through written requests for a specific jury instruction related to lesser included offenses; If the jury instructions are improperly presented, the jury cannot apply the law as it applies in lesser included offenses).)

§4-1-9. Double Jeopardy.

(1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode or the same facts as the original prosecution, a subsequent prosecution for the same or a different offense arising out of such episode or facts is barred if:

(a) The subsequent prosecution is for an offense that was or should have been tried under this Code in the former prosecution, unless such subsequent trial has been ordered as a separate trial by the Judge; and

(b) the former prosecution:

(i) resulted in acquittal; or

(ii) resulted in conviction; or

(iii) was improperly terminated; or

(iv) was terminated by a final order of judgment for the defendant that has not been reversed, set aside or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

(2) There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of facts or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of a lesser-included offense is an acquittal of the greater offense even though the conviction or the lesser-included offense is subsequently reversed, set aside, or vacated.

(3) There is a conviction if the prosecution resulted in a judgment of guilty that has not been reversed, set aside, or vacated; a verdict of guilty that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the Court.

(4) There is an improper termination of prosecution if the termination takes place before the verdict, is for reasons not amounting to an acquittal, and takes place after a jury has been impaneled and sworn in, or, if the matter was to be tried without a jury, after the first witness is sworn. However, termination of prosecution is not improper if:

- (a) the defendant consents to the termination; or
- (b) The defendant waives his right to object to the termination; or
- (c) The Court finds and states for the record that the termination is necessary because:
 - (i) it is physically impossible to proceed with the trial in conformity to the law; or
 - (ii) there is a legal defect in the proceeding would make any judgment entered upon a verdict reversible as a matter of law; or
 - (iii) prejudicial conduct in or out of the courtroom not attributable to the prosecution makes it impossible to proceed with the trial without injustice to the defendant or to the prosecution; or
 - (iv) the jury is unable to agree on a verdict; or
 - (v) a false statement of a juror on voir dire prevents a fair trial.

(5) A subsequent prosecution of an offense is not barred if the former prosecution resulted in a judgment of guilt held invalid on appeal or in a subsequent proceeding on a writ of habeas corpus, coram nobis or similar collateral attack.

(6) Prosecution of an offense is not barred by virtue of the fact that the defendant could be or has been charged under 18 U.S.C.A. §1153 (so-called Major Crimes Act) unless such charge has, in fact, resulted in a conviction or acquittal of the defendant by a federal court following trial.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also Lonjose v. Pueblo of Zuni, 28 SWITCA Rep. 1 (2017) (The Double Jeopardy Clause prohibits a trial court from retrying a defendant whose conviction has been reversed on appeal for any offense that is more serious than the offense for which a defendant was originally convicted at the first trial); Special Note: the version from which this was transcribed omitted the word "which" in Section-D(3)(ii), which has been added above to correct the omission.)

§4-1-10. Burden and Presumption of Innocence.

(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense against him is proved beyond a reasonable doubt. In the absence of such proof, the defendant shall be acquitted.

(2) By "element of the offense" is meant:

(a) The conduct, attendant circumstances or results of conduct proscribed, prohibited or forbidden in the definition of the offense; plus

(b) The culpable mental state required; but

(c) jurisdiction is not an element of the offense nor is the statute of limitations or any other matter similarly unconnected with the harm or evil, incident to conduct, sought to be prevented by the offense nor is the existence of justification or excuse as defense to the offense, and such may be established by a preponderance of the evidence.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also Sandy v. Pueblo of Zuni, 27 SWITCA Rep. 25 (2016) (In order for a Defendant to be convicted of a criminal offense, it is incumbent upon the prosecution to prove beyond a reasonable double each of the elements of the offense); Chapman v. Pueblo of Zuni, 21 SWITCA Rep. 8 (2010) (Since the Zuni Traffic Code is silent on standard of proof, and because the Zuni Traffic Code categorizes penalties for traffic offenses within the sentencing structure of the Zuni Criminal Code, then the standard of proof in Zuni Traffic Cases must be assumed as being proof beyond a reasonable doubt).)

§4-1-11. Negating Defenses.

The prosecution need not negate any defense either in the complaint or by proof unless the defense is in issue as a result of evidence presented at trial by either side, or unless the defense is an affirmative defense and the defendant has presented evidence of such.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-1-12. Presumptions of Fact.

An evidentiary presumption established by this Code has the following consequences:

(1) When the evidence of facts which support the presumption exist, the issue of the existence of the presumed fact must be submitted to the jury unless the Court is satisfied that the evidence as a whole clearly negates the presumed fact;

(2) In submitting the issue of the presumed fact to the jury, the Court shall charge the jury that while the presumed fact must on all evidence be proved beyond a reasonable doubt, the law regards the facts that give rise to the presumed fact as evidence of the presumed fact.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-1-13. Extradition Agreements. [Revised February 12, 2020, Resolution No. M70-2020-P023]

The Governor of the Tribe is hereby empowered to negotiate with any state, county or municipal jurisdiction or other Indian tribe and, with the approval of the Tribal Council, to enter into reciprocal agreements for the extradition, both to and from the Zuni Reservation, of persons accused of criminal offenses. Such agreements shall, while in effect, be the law of the Tribe regarding extraditions until either the date of expiration thereof, or until rescinded by the Tribal Council. No such agreement with any other jurisdiction shall be made unless and until the authority of such other jurisdiction to enter into such an agreement has been verified by a written opinion of the attorney for such other jurisdiction.

(Annotations: Enacted by Zuni Tribal Council Resolution No. M70-2020-P023 on February 12, 2020, and approved by the BIA on February 22, 2021.)

CHAPTER 2. PRINCIPLES OF CRIMINAL RESPONSIBILITY.

§4-2-1. Acts and Omissions to Act.

(1) A person is not guilty of an offense unless his liability is based on conduct, which includes a voluntary act or the omission to perform an act of which he is physically capable.

(2) The following are not voluntary acts within the meaning of this section:

(a) A reflex or convulsion;

(b) A bodily movement during unconsciousness or sleep;

(c) Conduct during hypnosis;

(d) A bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(3) Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:

(a) the omission is expressly made sufficient by the law defining the offense; or

(b) a duty to perform the omitted act is otherwise imposed by law.

(4) Possession is an act, within the meaning of this section, if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-2. Culpability - General Requirements. [Revised 1-24-78]

(1) A person is not guilty of an offense unless he acted purposely, knowingly, recklessly, or negligently, as the law may require, with respect to each element of the offense, or unless his acts constitute an offense involving strict liability.

(2) Kinds of culpability defined are:

(a) Purposely: a person acts purposely with respect to an element of an offense when:

(i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances, or he believes or hopes that they exist.

(3) Knowingly: a person acts knowingly with respect to an element of an offense when:

(a) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

(b) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(4) Recklessly: a person acts recklessly with respect to an element of an offense when he consciously disregards a substantial and unjustifiable risk that the element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(5) Negligently: a person acts negligently with respect to an element of an offense when he should be aware of a substantial and unjustifiable risk that the element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

(6) Strict Liability: an element of an offense shall involve strict liability only when the definition of the offense or element clearly indicates a legislative purpose to impose strict liability for an element of the offense by use of the phrase "strict liability" or other terms of similar import, and when so used no proof of a culpable mental state is required to establish the commission of the element or offense.

(7) When the culpability sufficient to establish an element of an offense is not specifically prescribed, such element is established if a person acts purposely, knowingly, or recklessly with respect thereto.

(8) When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(9) When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly or recklessly. When recklessness suffices to establish an element, such element is also established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element is also established if a person acts purposely.

(10) When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition [negates] the harm or evil sought to be prevented by the offense.

(11) When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is or should be aware of a high probability of its existence, unless he actually believes that it does not exist.

(12) A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.

(13) Neither the knowledge nor recklessness nor negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense, unless the definition of the offense so provides.

(14) When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly, or negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any element of the offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also Lonjose v. Pueblo of Zuni, 28 SWITCA Rep. 1 (2017) (If the criminal statute does not explicitly state the particular elements required for conviction, then the defendant must have acted at least recklessly, knowingly or purposefully in order to convict; For statutes that do not specify a element, acting negligently is not sufficient to sustain a conviction; Unlawful Sexual Intercourse is not a strict liability offense, and if the Pueblo of Zuni wishes to make it a strict liability offense, then they have to amend the statute accordingly; Special Note: the version from which this was transcribed used the word "negatives" in Subsection (10), and that word has been substituted with "negates" above; Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-2-3. Causal Relationships Between Conduct and Result.

(1) Conduct is the cause of a result when:

(a) It is an antecedent but for which the result in question would not have occurred; and

(b) The relationship between the cause and result satisfies any additional causal requirements imposed by this Code or the definition of the offense.

(2) When a particular mental state is specified in conjunction with an element of an offense, proof of that element is not avoided because the actual result differed from that intended or that which was probable or likely under the circumstances either in kind or degree or because a different person or different property was injured or affected than that intended or than that which was probable or likely under the circumstances, unless such differences are sufficient without consideration of the mental state involved to constitute a defense or avoidance or unless such differences are of such a magnitude that it would be unjust to find the element involved in light of such differences.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-4. Ignorance or Mistake.

(1) Ignorance or mistake as to a matter of fact or law is a defense only if:

(a) the ignorance or mistake negates a specific mental state required to establish an element of the offense; or

(b) the law provides that the actual state of mind, which existed itself, constitutes a defense.

(2) Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense if the situation had been as he supposed in which case the punishment available upon conviction shall not exceed that prescribed for the other offense.

(3) A belief that conduct does not legally constitute an offense is a defense for prosecution of an offense based on that conduct only when:

(a) the enactment defining the offense is not known to the actor and has not been published or reasonably made available prior to the conduct alleged; or

(b) the actor acted in reasonable reliance upon an official statement of law contained in a subsequent enactment or an interpretation rendered by a judge or presiding Tribal body in a written opinion. In either case the defendant shall have the burden of proving, by a preponderance of the evidence, his defense under this subsection.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-5. Liability for Conduct of Another.

(1) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for whom he is legally accountable, or both.

(2) A person is legally accountable for the conduct of another person when:

(a) Acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or

(b) he is made accountable for the conduct of such other person by this Code or the definition of the offense; or

(c) he is an accomplice of such other person in the commission of the offense.

(3) A person is an accomplice of another person in the commission of an offense if:

(a) with the purpose promoting or facilitating the commission of an offense, he

(i) solicits such other person to commit it; or

(ii) aids or agrees or attempts to aid such person in planning or committing it; or

(iii) having legal duty to prevent the commission of the offense, fails to make proper effort to do so; or

(b) his conduct is expressly declared by law to establish his complicity.

(4) When causing a particular result is an element of an offense an accomplice in the conduct causing such result is an accomplice in the commission of that offense if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(5) A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for whom he is legally accountable, unless such liability is inconsistent with the purpose of his incapacity.

(6) Unless otherwise provided by the Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(a) he is a victim of that offense; or

(b) the offense is so defined that his conduct is inevitably incident to its commission; or

(c) he terminates his complicity prior to the commission of the offense and

(i) wholly deprives it of effectiveness in the offense, or

(ii) gives timely warning to law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

(7) An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not

been prosecuted or convicted or has been convicted of a different offense or degree of offense or has immunity from prosecution or has been acquitted.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-6. Corporations and Unincorporated Associations.

(1) A person is legally accountable for any conduct he performs or causes to be performed in the name of a corporation or unincorporated association or in its behalf to the same extent as if it were performed in his own name or behalf.

(2) Whenever a duty to act is imposed by law upon a corporation or unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon himself.

(3) When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or an unincorporated association, he is subject to the sentence authorized by law when a natural person is convicted of an offense of the class involved.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-7. Intoxication.

(1) Except as provided in subsection (4) of this section, intoxication of the actor is not a defense unless it negates an element of the offense.

(2) When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober such unawareness is immaterial.

(3) Intoxication does not, in itself, constitute a mental disease as that term is used in this Code.

(4) Intoxication which (a) is not self-induced, or (b) is the result of intoxication excessive in degree given the amount of intoxicant, to which result the actor does not know he is susceptible, is an affirmative defense if by reason of such intoxication the actor at the time of his conduct lacks substantial capacity either to appreciate its wrongfulness or to conform his conduct to the requirements of the law.

(5) "Intoxication" means a disturbance of mental or physical capabilities and/or capacities resulting from the introduction of substances into the body. Except as otherwise provided in this Code, intoxication can be proven by its external indications and no proof of specific consumption or blood alcohol content is necessary, though such evidence is permissible to prove intoxication.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-8. Duress.

(1) Except as herein otherwise provided, it is an affirmative defense that the actor engaged in conduct charged to constitute an offense because he was coerced to do so by the use of, or threat to use, unlawful force against his person or the person of another, which a law-abiding person of reasonable firmness in his situation would have been unable to resist.

(2) The defense provided in this section is unavailable to a person who intentionally, knowingly, or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

(3) It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under subsection A above. No presumption of duress arises from the mere presence of the husband at the time a woman acted.

(4) The defense provided in this section is unavailable in any situation where the coerced conduct threatens to cause death or serious bodily harm to some person other than the actor or does in fact cause such harm.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-9. Consent.

(1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(2) When conduct is charged to constitute an offense because it threatens to cause or causes bodily harm, consent to such conduct or to the infliction of such harm is a defense only if:

(a) the bodily harm consented to or threatened by the conduct consented to is not serious; or

(b) the conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest, competitive sport or other lawful activity; or

(c) the consent establishes a justification for the conduct under this Code.

[(3)] Unless otherwise provided by this Code or the law defining the offense, [consent] does not constitute consent if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute an offense; or

(b) it is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known to the actor to be unable to make a reasonable judgment as to the nature or the harmfulness of the conduct charged to constitute the offense; or

(c) it is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or

(d) it is induced by force, duress, or deception.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed has three (3) discrepancies: (1) two paragraphs numbered "(2)"; renumbered "(3)" to be correctly numbered; (2) in correctly numbered paragraph "(3)" the word "asset" was probably meant to use the word "ascent," and since this statute is for "consent" that word has been inserted above; and (3) misnumbered paragraph "(4)" should be numbered "(d)" and has been corrected above.)

§4-2-10. Entrapment.

(1) A public law enforcement officer or official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting an offense by either:

(a) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

(b) employing methods of persuasion or inducement, which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

(2) The defense afforded by this section shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

(3) Except as provided in (2) above, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of the evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried to and decided by the Court and not by the jury. Evidence of past offenses shall be admissible only if the defendant takes the stand in his own defense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-11. Mental Disease or Defect.

(1) In any prosecution for an offense, it shall be a defense that the defendant, at the time of the conduct upon which the prosecution is based, as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.

(2) As used in this section, the terms "mental disease" or "defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(3) The defense afforded by this section shall not be available unless notice of intent to rely on such defense is given at least two weeks before trial. By giving such notice, the defendant will be deemed to have consented to be examined for the prosecution by not more than two professional medical or other experts for the purpose of ascertaining the state of defendant's mental health.

(4) No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-12. Justification.

Conduct, which is justified, is a defense to prosecution for any offense based on the conduct. The defense of justification may be claimed:

(1) when the actor's conduct is in defense of persons or property or as otherwise described in the next succeeding five sections; or

(2) when the actor's conduct is reasonable and in fulfillment of his duties as a Tribal or governmental officer or employee; or

(3) when the actor's conduct is reasonable discipline of minors by parents, guardians, teachers or other persons in loco parentis; or

(4) when the actor's conduct is reasonable discipline of persons in custody under this Code.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-13. Force in Defense of Persons.

(1) A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such force is necessary to defend himself or a third person against such other's imminent use of unlawful force; however, a person is justified in using force which is intended or likely to cause death or serious bodily injury only if he reasonably believes that such force is necessary to prevent death or serious bodily injury to himself or a third person.

(2) A person is not justified in using force under the circumstances specified in subsection (a) of this section if he:

(a) initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant; or

(b) is attempting to commit, committing, or fleeing after the commission of an offense; or

(c) was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other notwithstanding continues or threatens to continue the use of unlawful force.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-14. Force in Arrest.

Any person is justified in using any force, except deadly force, which he reasonably believes to be necessary to effect an arrest or to defend himself or another from bodily harm while making an arrest.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-15. Deadly Force by Law Enforcement Officer.

A law enforcement officer or any person acting by his command in his aid and assistance is justified in using deadly force when:

(1) in effecting the arrest or preventing an escape from custody following an arrest and the officer reasonably believes both that:

(a) such force is necessary to prevent the arrest from being defeated by resistance or escape; and

(b) the person to be arrested is attempting to escape by use of a deadly weapon, or

(2) the officer is in the performance of his legal duty or the execution of legal process and reasonably believes the use of force is necessary to protect himself or others from imminent danger to life.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-16. Force in Defense of Habitation.

A person is justified in using force against another when and to the extent that he reasonably believes that the force is necessary to prevent or terminate the other's unlawful entry into or attack upon his place of habitation; however, he is justified in the use of force which is intended or likely to cause death or serious bodily injury only if:

(1) the entry is made or attempted in a violent and tumultuous manner and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any dwelling or person therein and that the force is necessary to prevent the assault or offer of [personal] violence; or

(2) he reasonably believes that the entry is made or attempted for the purpose of committing a Class A offense or other offense involving threat of bodily injury therein and that such force is necessary to prevent the commission of such offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the word "person" in paragraph-1, which has been replaced with "[personal]" in order to make the language consistent with other language in the paragraph.)

§4-2-17. Force in Defense of Property.

A person is justified in using force, other than deadly force, against another when and to the extent that he reasonably believes that force is necessary to prevent or terminate criminal interference with real or personal property:

- (1) Lawfully in his possession; or
- (2) Lawfully in the possession of his immediate family; or
- (3) Belonging to a person whose property he has a legal duty to protect.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-2-18. Justification of a Defense; Civil Remedies.

(1) In any prosecution based on conduct, which is justified as specified in this Code, such justification is an affirmative defense.

(2) The fact that conduct is justifiable as specified in this Code does not abolish or impair any civil right or remedy, which might arise from such conduct.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

CHAPTER 3. SENTENCES AND PUNISHMENTS.

§4-3-1. Sentencing in General.

(1) A person adjudged guilty of an offense under the Tribal Code shall be sentenced in accordance with this chapter.

(2) Penal laws enacted or adopted after the effective date of this Code shall be classified for sentencing purposes in accordance with the provisions of this part.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-3-2. Designation of Offenses.

Offenses are designated as Class A offenses, Class B offenses, and Class C offenses.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-3-3. Class of Offense Not Specified.

Any offense for which no penalty or sentence is specified or which is not specifically designated as a certain class of offense shall be treated for purposes of sentencing and punishment as a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-3-4. General Principles.

The sentence imposed in each case should call for the minimum amount of custody or confinement, which is consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-3-5. Sentences and Combinations of Sentences; Civil Penalties.

(1) A Court may, as provided in this chapter, sentence a person adjudged guilty of an offense to anyone of the following sentences or a combination of such sentences:

- (a) to pay a fine; or
- (b) to removal from and/or disqualification of public or private office, but only if such is specifically provided for as a punishment for conviction of a specific offense; or
- (c) to probation and/or suspension of sentence on such terms and conditions as the Court may direct; or
- (d) to imprisonment or confinement, either full or part time.

(2) A Court shall also have the authority to order a person adjudge guilty of an offense to pay any or all of the following amounts or do the following acts:

- (a) pay court costs not to exceed \$25.00; or
- (b) pay any civil penalty provided by law; or
- (c) pay money damages, surrender property, or perform any other act for the benefit of any person or party injured personally or in his property by the person adjudged guilty provided such injuries are fairly attributable to the act or failure to act constituting the offense for which guilt was adjudged.

(3) This part shall not deprive a Court of authority to cite for contempt, cancel or suspend a license, forfeit property, or do any other act or make any other order authorized by law.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also Hannaweeke v. Pueblo of Zuni, 19 SWITCA Rep. 12 (2008))(Criminal restitution hearings come with the same rights attached under the Rules of Criminal Procedure, and the Indian Civil Rights Act; The trial court has the option of dismissing the restitution hearing as a separate issue attached to the criminal case, and allow the injured party to file their own civil action for restitution against a criminal defendant - which would then be governed by the Rules of Civil Procedure, and the rights afforded under the Rules of Criminal Procedure or the Indian Civil Rights Act would not attach to that civil action; SWITCA critical because this creates confusion by inserting civil penalties within the context of criminal sentencing; implied recommendation to amend for clarification); see also 11/22/2017 Administrative Order (CJ-2017-0001: In the Matter of Funeral and Religious Furloughs).)

§4-3-6. Maximum Fines and Sentences of Imprisonment. [Revised February 12, 2020, Resolution No. M70-2020-P023]

(1) A person convicted of an offense may be sentenced as follows:

(a) if the offense is a Class A offense, to a term of imprisonment not to exceed 1 year and to a fine not to exceed \$5,000.00;

(b) if the offense is a Class B offense, to a term of imprisonment not to exceed 6 months and to a fine not to exceed \$2,500.00;

(c) if the offense is a Class C offense, to a term of imprisonment not to exceed 3 months and to a fine not to exceed \$1,000.00.

(2) The terms of imprisonment listed above apply only to fulltime incarceration in the Tribal or some other jail or penitentiary and do not apply to full-time or part-time residence or confinement in a medical or rehabilitative facility as a condition of probation or parole or as otherwise ordered by the Court.

(3) The fines listed above may be imposed in addition to any assessment of costs or other civil penalties and in addition to any amounts ordered paid as restitution.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Amended by Zuni Tribal Council Resolution No. M70-2020-P023 on February 12, 2020, and approved by the BIA on February 22, 2021; see also 11/22/2017 Administrative Order (CJ-2017-0001: In the Matter of Funeral and Religious Furloughs).)

§4-3-7. Payment of Fines and Other Monies.

(1) Fines shall be paid in cash or with the consent of the Court, may be worked off by performing approved labor for the Tribe, at the rate of \$4.00 per day, or as otherwise established by the Tribal Council.

(2) The Court may, upon request of a defendant or upon its own motion, allow that any fines or other required payments be paid in installments and on conditions tailored to the means of the defendant.

(3) The imposition of incarceration should not be imposed as an automatic alternative to payment of a fine or other money, but rather a Court should, upon default to pay a fine or other money as required, examine the reason for the default and may, if justice requires, impose an additional sentence of incarceration of no more than one day of incarceration for each \$4.00 of the required money left unpaid.

(4) The methods available for collecting a civil judgment shall be available to collect any unpaid money upon order of the Court following a failure to make any required payment and ascertainment of a reason therefore.

(5) When justice requires, the Court may revoke or remit a fine or any unpaid portion thereof or any other monies required to be paid, or may modify the terms and conditions of payment.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-3-8. Decision to Impose a Fine.

In determining whether to impose a fine and its amount, the Court should consider:

(1) The financial resources of the defendant and the burden that payment of a fine will impose with due regard to his other obligations;

(2) The ability of the defendant to pay a fine on an installment basis or on other conditions to be fixed by the Court;

(3) The extent to which payment of a fine will interfere with the ability of the defendant to make any ordered restitution or reparation to the victim of the crime; and

(4) Whether there are particular reasons, which make a fine appropriate as a deterrent to the offense involved or appropriate as a corrective measure for the defendant.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-3-9. Concurrent and Consecutive Sentences. [Revised February 12, 2020, Resolution No. M70-2020-P023]

(1) Unless the Court shall direct otherwise in its pronouncement of sentence, all sentences shall run concurrently and not consecutively.

(2) The Court shall consider the gravity and circumstances of the offenses and the history, character, and rehabilitative needs of the defendant as well as the need to protect the public in determining whether to impose consecutive sentences.

(3) The Court shall not impose consecutive sentences for offenses arising out of a single course of criminal conduct, including solicitation and criminal conspiracy, unless the criminal conduct involved the death or serious bodily injury of any victim of the crime or a serious threat of such, or unless the offense was committed in a willful, malicious or aggravated manner and involved an offense against the person of the victim or victims.

(4) In no event shall the maximum term of imprisonment imposed exceed 9 years.

(5) Whenever a sentence is imposed or sentences are imposed to run concurrently with the other or with sentences presently being served, the greater sentence shall be the term to be served with all lesser sentences merging therein, or, if equal sentences are imposed, they shall merge into one sentence, but in no event shall the imposition of one sentence cut short the time to be served on another sentence unless the Court specifically directs that such be the result.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Amended by Zuni Tribal Council Resolution No. M70-2020-P023 on February 12, 2020 and approved by the BIA on February 22, 2021; see also 11/22/2017 Administrative Order (CJ-2017-0001: In the Matter of Funeral and Religious Furloughs).)

§4-3-10. Credit.

(1) Credit against a term of imprisonment imposed following an adjudication of guilty shall be given to a defendant for all time spent in custody as a result of the criminal charge for which the sentence is imposed or as a result of the conduct on which such charge is based. Such credit shall apply to time spent in custody prior to trial, during trial, pending sentence, and pending resolution of an appeal.

(2) In case of re-prosecution for any reason of the same offense or an offense based on the same conduct for which a defendant has been imprisoned, credit shall be given for all time spent in custody under the prior prosecution as provided in subsection (1) above.

(3) Credit as provided in this section should be considered and computed by the Court at the time of sentencing.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-3-11. Reduction of Sentences.

(1) The Court may, upon motion of any party or its own motion, reduce or modify a sentence within a reasonable time after its imposition as provided [in] the Rules of Criminal Procedure if new factors bearing on the sentence become known. Such reduction or modification shall be done in open Court.

(2) In the event that commitment to a special type of facility other than a jailor penitentiary is imposed or accepted as a condition of probation or parole, the Court may for good cause shown, terminate or reduce such commitment.

(3) The Court shall have authority to terminate at any time continued supervision or the power to revoke either a sentence not involving confinement or a sentence involving less than total confinement in a jailor penitentiary. The Court shall also have the power to lessen the conditions on which such sentences were imposed or lessen the time in which the power to revoke will exist.

(4) Except as otherwise specifically provided in this chapter, the Court shall not increase a term of imprisonment once it has been imposed.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed included the word "on the a" in Subsection-(1), and that has been replaced with "[in]" above.)

§4-3-12. Sentencing Proceeding.

As soon as practicable after the determination of guilt and the examination of any pre-sentence reports or recommendations, a proceeding should be held at which the Court shall:

- (1) hear submission by the parties on the facts relevant to the sentence;
- (2) hear argument by the defendant or his counsel on the applicability of various sentencing alternatives to the facts of the case;
- (3) afford the defendant the opportunity to make a statement to the Court;
- (4) in cases where guilt was determined by plea, inform itself, if not previously informed, of the existence of plea discussions or agreements and the extent to which they involve recommendations as to the appropriate sentence;
- (5) make specific findings on all controverted issues of fact, which are deemed relevant to the sentencing decision;
- (6) ascertain and consider all credits due the defendant as a result of prior periods of incarceration;
- (7) carefully state and assure that a record is made of the precise terms of the sentence imposed and assure that those responsible for the executing the sentence be informed of such terms;
- (8) state for the record the reasons for selecting the particular sentence imposed, unless the Court deems it to be in the best interests of the defendant not to do so;
- (9) require that a record be kept of the sentencing proceedings with a verbatim recording or transcription of such if possible.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also 11/22/2017 Administrative Order (CJ-2017-0001: In the Matter of Funeral and Religious Furloughs).)

§4-3-13. Suspension of Sentence and Probation.

- (1) Except as otherwise provided in this Code, the Court shall have the authority to suspend the imposition of sentence on a person who has been convicted of an offense and place him on probation as provided herein.
- (2) When the Court suspends the imposition of sentence on a person who has been convicted of a crime or sentences him to be placed on probation, it shall attach such reasonable conditions, as authorized herein, as it deems necessary to insure that he will lead a law abiding life or likely to assist him to do so.

- (3) The Court, as a condition of its order of probation, may require the defendant:
- (a) to meet family responsibilities;
 - (b) to devote himself to a specific employment or occupation;
 - (c) to undergo available medical or psychiatric or other rehabilitative treatment and to enter and remain in a specified institution, when required for that purpose;
 - (d) to pursue a prescribed secular course of study or vocational training;
 - (e) to attend or reside in a facility established for the instruction, recreation or residence of persons on probation;
 - (f) to refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
 - (g) to refrain from all use of intoxicants, narcotics or drugs, unless taken or used under a doctor's orders and obtained by a doctor's prescription;
 - (h) to have in his possession no firearm or other dangerous weapon unless granted written permission by the Court;
 - (i) to make restitution of the fruits of his crime or to make reparation, in an amount he can afford to pay, for the loss of damage caused thereby;
 - (j) to remain within the jurisdiction of the Court and to notify the Court or the probation officer of any change of address or employment;
 - (k) to report as directed to the Court or the probation officer and to permit the officer to visit his home;
 - (l) to satisfy any other condition reasonably related to the rehabilitation of the defendant and not incompatible with his freedom of conscience or unduly restrictive of his liberty given his status as a probationer.

(4) When the Court sentences a person who has been convicted of a Class A offense or a Class B offense to be placed on probation, it may require him to serve a term of imprisonment not to exceed 30 days in the case of a Class A offense and 15 days in the case of a Class B offense as an additional condition of its order. Such term of imprisonment shall be counted as part of the period of the probation but shall not count as part of any sentence pronounced as a result of a revocation of probation.

(5) The defendant shall be given a copy of the requirements of his probation stated with sufficient specificity to enable him to guide himself accordingly.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: Subsection-4 of this statute conflicts with the language of Section 4-3-10 in that a Defendant is to be given credit for all time actually served.)

§4-3-14. Period of Suspension or Probation; Modification.

(1) When the Court has suspended sentence and/or has sentenced a defendant to be placed on probation, the maximum period of the suspension or probation shall be 2 years, provided, however, that the maximum period will be imposed for Class B and C offenses only when such appears to be consistent with the rehabilitative needs of the defendant. Shorter periods may be imposed at the Court's discretion.

(2) During the period of suspension or probation, the Court, on application of the probation officer or of the defendant, or on its own motion, may modify the requirements imposed on the defendant or add further requirements consistent with the rehabilitative needs of the defendant or may discharge the defendant.

(3) Upon termination of the period of suspension or probation, or other earlier discharge of the defendant, the defendant shall be relieved of any obligations imposed by order of the Court and shall have satisfied his sentence for the offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-3-15. Violation of Terms of Suspension or Probation.

(1) At any time before the discharge of the defendant or the termination of the period of suspension or probation:

(a) the Court may summon the defendant to appear before it or it may issue a warrant for his arrest;

(b) a probation or law enforcement officer, having probable cause to believe the defendant has failed to comply with a requirement imposed as a condition of the probation order or that he has committed another crime may arrest him without a warrant;

(c) the Court, if there is probable cause to believe the defendant has committed another crime or if he has been held to answer therefore, may commit him without bail, pending a determination of the charge by the Court;

(d) the Court, if satisfied that the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the probation order, or if he has been convicted of another crime, may revoke the suspension or probation and sentence or re-sentence the defendant as provided in this Code.

(2) When the Court revokes a suspension or probation, it may impose on the defendant any sentence that might have been imposed originally for the crime for which he was convicted, except that the defendant shall not be sentenced to imprisonment unless:

(a) he has been convicted of another crime; or

(b) his conduct indicates that his continued liberty involves undue risk that he will commit another crime; or

(c) such disposition is essential to vindicate the authority of the Court.

(3) The Court shall not revoke suspension or probation or increase the requirements imposed thereby except after a hearing upon written notice to the defendant of the grounds on which such action is proposed. The defendant shall have the right to hear and controvert the evidence against him, to offer evidence in his defense and to be represented by counsel of his choice at his own expense.

(4) Whenever a defendant is taken into and held in custody as provided in this section for violation of probation conditions other than the alleged commission of an offense, he shall be entitled to have his sentence considered by the Court within 48 hours of his confinement, unless he requests further time to prepare his defense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-3-16. Order Removing Disqualification or Disability Based on Conviction.

(1) When the Court has suspended sentence or has sentenced the defendant to be placed on probation and the defendant has fully complied with the requirements imposed as a condition of such order and has satisfied the sentence, the Court may order that so long as the defendant is not convicted of another offense, the judgment shall not constitute a conviction for the purpose of any disqualification or disability imposed by law upon conviction of a crime or offense.

(2) Proof of a conviction as relevant evidence upon the trial or determination of any issue or for the purpose of impeaching the defendant as a witness is not a disqualification or disability within the meaning of this section.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-3-17. Final Judgment.

A judgment suspending sentence or sentencing a defendant to be placed on probation shall be deemed tentative to the extent such is modifiable as provided herein, but for all other purposes shall constitute a final judgment.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-3-18. Eligibility for Parole.

(1) Except as otherwise provided herein, a defendant sentenced to and serving a term of imprisonment for more than 60 days shall be eligible to petition the Court for a grant of release on parole.

(2) Parole may be granted as provided herein to a defendant who has demonstrated good behavior and faithful performance of duties while incarcerated.

(3) Parole shall not be considered or granted to a defendant who has been convicted of an offense involving the death or serious bodily injury of a victim of the offense unless the defendant has been sentenced to consecutive sentences totaling in excess of one

year and such consideration may be given only after the defendant has served one year under such sentences.

(4) The provisions on parole contained herein shall apply only to confinement in a [jail or] penitentiary and shall not apply to confinement ordered in a medical or rehabilitative facility.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed included the word "jailor" in Subsection-4, and that has been replaced with "[jail or]" above.)

§4-3-19. Petition for Parole.

(1) Parole may be granted by the Court on its own motion or on the petition of an incarcerated defendant.

(2) Any defendant eligible for parole as set forth above may petition the Court for consideration of parole. Such petition may be made on a form to be provided for such purposes by the Court, at a time no earlier than the expiration of half the period of imprisonment ordered by the Court. If a defendant desires, he will be allowed opportunity to contact and meet with counsel on the jail premises to aid him in the preparation of his petition for parole. The completed petition shall be forwarded without unnecessary delay to the Court by the defendant's [counsel or] the jailer.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed included the word "counselor" in Subsection-2, and that has been replaced with "[counsel or]" above.)

§4-3-20. Consideration of Parole.

(1) The Court, upon receipt of a petition for parole, shall cause the Clerk of the Court to prepare a report stating the term for which the defendant was sentenced, the offenses charged, the time served and may include a sworn statement from a Tribal jailer regarding the conduct of the defendant while incarcerated and any other information deemed relevant by the Court.

(2) Unless it appears that the defendant is not eligible for parole as a result of some reason other than his behavior while incarcerated, the Judge shall schedule a parole hearing within 14 days and may request a report from a probation officer on the background and rehabilitative needs of the defendant.

(3) A hearing shall be held at which the defendant shall have the right to be represented by counsel and present evidence. The Court may, upon consideration of all relevant factors, grant parole to a defendant upon any or all of the conditions set forth in this Code for the granting of probation and for like periods as if probation were then imposed.

(4) The Court's decision to grant or refuse parole shall be reviewable only for abuse of discretion.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-3-21. Powers Over Parolee.

Once parole is granted, the defendant shall be subject to the same procedures and conditions as if he were originally placed on probation and the Court shall have the power to modify or revoke the probation under like rules and circumstances as provided in this Code for defendants on probation.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

CHAPTER 4. OFFENSES.

§4-4-1. Attempt. [Revised 1-24-78]

(1) Person is guilty of an attempt to commit an offense if, acting with the kind of culpability otherwise required for the commission of the offense, he engages in conduct constituting a substantial step toward commission of the offense.

(2) Conduct does not constitute a substantial step toward the commission of an offense unless it is strongly corroborative of the actor's intent to commit the offense.

(3) Except as otherwise provided in this Code, attempt shall be:

- (a) a Class A offense if the attempted offense was a Class A offense;
- (b) a Class B offense if the attempted offense was a Class B offense;
- (c) a Class C offense if the attempted offense was a Class C offense.

(Annotation: Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-2. Criminal Conspiracy.

(1) A person is guilty of criminal conspiracy when he, intending that conduct constituting a crime or offense be performed, agrees with one or more persons to engage in or cause the performance of such conduct and anyone of them commits an overt act in pursuance of the conspiracy, except that where the offense is a Class A offense the overt act is not required for the commission of conspiracy.

(2) Conspiracy to commit:

- (a) a Class A offense is a Class A offense;
- (b) a Class B offense is a Class B offense;
- (c) a Class C offense is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-3. Solicitation.

(1) A person is guilty of solicitation when he, intending that another person commit an offense, entices, advises, incites, orders, or otherwise encourages such other person to commit an offense.

(2) Solicitation to commit:

- (a) Class A offense is a Class B offense;
- (b) a Class B offense is a Class C offense;
- (c) a Class C offense is not an offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-4. Simple Assault.

(1) A person is guilty of simple assault if he:

- (a) attempts to cause or purposely, knowingly, or recklessly causes bodily injury to another; or
- (b) negligently causes bodily injury to another with a deadly weapon; or
- (c) attempts by a show of force or violence to put another in fear of imminent serious bodily injury; or
- (d) recklessly endangers another by an act or omission to act, which threatens to cause serious bodily injury to another, whether or not such harm actually occurs.

(2) Simple Assault is a Class B offense unless committed in a fight or scuffle entered into by mutual consent, in which case, it is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-5. Aggravated Assault.

(1) A person is guilty of aggravated assault if he:

- (a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or
- (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
- (c) intentionally or knowingly uses a deadly weapon to put another in fear of imminent serious bodily injury.

- (2) Aggravated Assault is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-6. Mayhem.

- (1) A person is guilty of mayhem if he unlawfully and purposely or knowingly:
- (a) deprives a human being of a member of his body or disables or renders it useless; or
 - (b) cuts out or disables the tongue, puts out an eye, or slits the nose, ear or lip of another.
- (2) Mayhem is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-7. Terroristic Threats.

- (1) A person is guilty of terroristic threats if he threatens verbally or in writing to commit any offense involving violence with intent to terrorize another or place such other in fear of imminent serious bodily injury or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.
- (2) Terroristic threats is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-8. Criminal Homicide.

- (1) A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being.
- (2) Criminal homicide is a Class A offense, and if the offense is found to have been committed purposely or knowingly, no suspension of sentence, probation or parole shall be granted, and the maximum fine and incarceration shall be imposed.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-9. Vehicular Homicide.

- (1) A person is guilty of vehicular homicide if, while under the influence of an alcoholic beverage, intoxicating, liquor, a controlled substance, or any drug, to a degree, which renders the person incapable of safely driving a vehicle, he causes the death of another by operating a motor vehicle in a reckless, negligent, or careless manner.

(2) Any chemical test administered on a defendant with his consent or after his arrest, whether with or against his consent, to determine blood alcohol content, shall be admissible in accordance with the rules of evidence.

(3) Any presumptions established to determine intoxication based on blood alcohol content shall apply to the proof of intoxication under this section.

(4) For purpose of this section, a motor vehicle is any self-propelled vehicle and includes, but is not limited to, any automobile, truck, van, motorcycle, train, engine, watercraft, aircraft or snowmobile.

(5) Vehicular homicide is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-10. Causing a Suicide.

(1) A person is guilty of causing a suicide if he purposely causes a suicide by force, duress, or deception.

(2) Causing a suicide is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-11. Aiding or Soliciting a Suicide.

(1) A person is guilty of aiding or soliciting a suicide if he purposely aids or solicits another to commit suicide.

(2) Aiding or soliciting a suicide is a Class A offense if the defendant's conduct has actually caused or contributed substantially to a suicide or an attempted suicide; otherwise, it is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-12. Kidnapping.

(1) A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:

- (a) to hold for ransom or reward, or as a shield or hostage; or
- (b) to facilitate commission of any offense or flight thereafter; or
- (c) to inflict bodily injury on or to terrorize the victim or another; or

(d) to interfere with the performance of any Tribal, governmental or political function.

(2) A removal, restraint, or confinement is unlawful within the meaning of this Code if it is accomplished by force, threat or deception, or, in the case of a person under the age of 14 or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

(3) Kidnapping is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-13. False Imprisonment.

(1) A person is guilty of false imprisonment if he knowingly restrains another unlawfully so as to interfere with his liberty.

(2) False imprisonment is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-14. Custodial Interference.

(1) A person, whether a parent or other person, is guilty of custodial interference if:

(a) without good cause, he takes, entices, conceals, or detains a child under the age of 16 from his parent, guardian or other lawful custodian:

(i) knowing he has no legal right to do so; and

(ii) with intent to hold the child for a period substantially longer than any visitation or custody period previously awarded by a court of competent jurisdiction; or

(b) having actual physical custody of a child under the age of 16 pursuant to a judicial award of a court of competent jurisdiction which has given another person visitation or custody rights, and without good cause, he detains or conceals the child with intent to deprive the other person of his lawful visitation or custody rights; or

(c) without good cause he takes, entices or detains an incompetent or other person who has been committed by authority of law to the custody of another person or institution from the other person or institution knowing he has no legal right to do so.

(2) Custodial interference is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-15. Criminal Coercion.

(1) A person is guilty of criminal coercion if, with purpose to restrict unlawfully another's freedom of action to his detriment, he threatens to:

- (a) commit any criminal offense; or
- (b) accuse anyone of a criminal offense; or
- (c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation; or
- (d) take or withhold action as an official, or cause an official to take or withhold action.

(2) It is an affirmative defense to prosecution based on this section, except for subsection (1) above, that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure, or proposed official action; for example, as by refraining from further misbehavior, making good a wrong done, refraining from taking any action or responsibility for which the actor believes the other disqualified.

(3) Criminal coercion is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed makes reference to "subsection (1)" in Subsection-2, but that reference makes no sense in the context of the whole language in Subsection-2.)

§4-4-16. Rape.

(1) A male person who has sexual intercourse with a female not his wife is guilty of rape if:

- (a) he compels her to submit by force or by the threat of imminent death, serious bodily injury, extreme pain, or kidnapping to be inflicted on her or anyone else; or
- (b) he compels her to submit by any threat that would prevent resistance by a woman of ordinary resolution; or
- (c) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or
- (d) he knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct; or
- (e) the female is unconscious or he knows that she is unaware that a sexual act is being committed upon her or that she submits because she falsely supposes that he is her husband; or

(f) the female is less than 14 years old.

(2) Rape is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-17. Unlawful Sexual Intercourse.

(1) A male person is guilty of unlawful sexual intercourse if he has sexual intercourse with a female, not his wife, who is under 16 years of age, regardless of her consent.

(2) Unlawful sexual intercourse is a Class A offense except that when the male at the time of intercourse was no more than three years older than the female, and the female consented, it is a Class C offense. Evidence of the defendant's age in relation to the victim and the consent of the victim shall be raised by the defendant and need not be affirmatively proven by the prosecution.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also Lonjose v. Pueblo of Zuni, 28 SWITCA Rep. 1 (2017) (In order to sustain a conviction for unlawful sexual intercourse pursuant to the Zuni Tribal Code, the prosecution must prove beyond a reasonable doubt all of the elements of the offense, and that the defendant acted at least 'recklessly' with respect to such elements; Unlawful Sexual Intercourse is not a strict liability offense, and if the Pueblo of Zuni wishes to make it a strict liability offense, then they have to amend the statute accordingly; If the government asks an alleged victim of a sex offense about other sexual partners beside the defendant, then they have opened the door for the defendant to cross-examine the alleged victim on other sexual partners).)

§4-4-18. Deviate Sexual Intercourse.

(1) A person is guilty of deviate sexual intercourse if he engages in deviate sexual intercourse, or causes another to engage in deviate sexual intercourse and if:

(a) he compels the other person to participate by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or

(b) he compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution; or

(c) he has substantially impaired the other person's power to appraise or control his conduct by administering or employing without the knowledge of the other person drugs, intoxicants, or other means for the purpose of preventing resistance; or

(d) he knows that the other person suffers from a mental disease or defect, which renders him incapable of appraising the nature of his conduct or he knows that the other person is unconscious or submits because he is unaware that a sexual act is being committed upon him; or

(e) the other person is less than fourteen (14) years of age.

(2) Deviate sexual intercourse means sexual intercourse per so or per anum between human beings who are not husband and wife, or any form of sexual intercourse with an animal.

(3) Deviate sexual intercourse is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed uses the phrase "per so" in Subsection-2, and that is an unknown phrase and it is unclear whether the drafter meant "per se" or "pro se.")

§4-4-19. Sexual Assault.

(1) A person is guilty of sexual assault if he subjects another not his spouse to any sexual contact and:

(a) he knows that the conduct is offensive to the other person; or

(b) he knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct; or

(c) he knows that the other person is unaware that a sexual act is being committed; or

(d) he has substantially impaired the other person's power to appraise or control his conduct by administering or employing without the other's knowledge drugs, intoxicants, or other means for the purpose of preventing resistance; or

(e) the other person is less than 14 years old; or

(f) the other person is less than 16 years old and the actor is at least four years older than the other person; or

(g) the other person is less than 21 years old and the actor is his parent, guardian or otherwise responsible for general supervision of his welfare; or

(h) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him.

(2) Sexual contact is any touching of the sexual or other intimate parts of the person of another or otherwise taking indecent liberties with another for the purpose of arousing or gratifying sexual desire of either party.

(3) Sexual assault is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-20. Indecent Exposure. [Revised 1-24-78]

(1) A person is guilty of indecent exposure if he knowingly and intentionally exposes his primary genital area to public view for the purpose of arousing or gratifying sexual desire of himself or of any other person.

(2) Indecent exposure is a Class C offense.

(3) If indecent exposure is committed in the presence of a person under the age of fourteen (14) years, indecent exposure is a Class B offense.

(Annotation: Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-21. Illicit Cohabitation.

(1) A person is guilty of illicit cohabitation if he lives together as man and wife in the same dwelling with a person of the opposite sex to whom he is not married.

(2) Proof of sexual relations shall not be required, but may be admitted, to prove an offense under this section.

(3) Illicit cohabitation is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-22. Provisions Applicable to Sexual Offenses.

(1) The provisions of the Code relating to sexual offenses shall not apply to conduct between married persons; provided, however, that for purposes of these provisions, persons living apart under a decree of judicial separation are not married.

(2) No prosecution may be instituted or maintained under these provisions on sexual offenses unless the alleged offense was brought to the attention of public authority within three months of its occurrence, or, where the alleged victim is less than 18 years old or otherwise incompetent to make complaint, within three months after a parent or guardian or other competent person specifically interested in the victim learns of the offense.

(3) Whenever an element of an offense depends on the age of a child being below the age of 14, it is no defense that the actor did not know the child's age or reasonably believed the child to be older than 14. Whenever an element of an offense depends on the age of a child being below a critical age other than 14, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the child to be above the critical age.

(4) Whenever, in the discretion of the Judge in any prosecution before a jury regarding a sexual offense in this Code, the jury shall be instructed to evaluate the testimony of a victim or complaining witness with special care in view of the emotional involvement of the

witness and the difficulty of determining the truth with respect to alleged sexual activities carried out in private, when such are not otherwise corroborated.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-22(5). Sex Offender Registration Offense. [Revised May 20, 2014, Ordinance #60]

(1) A person commits sex offender registration by failing to register, failing to provide current information, or by providing false or misleading information to the designated office of the Tribe, when required to register or provide such information under state, tribal or federal law for persons convicted of a sex offense.

(2) Sex offender registration offense is a Class A offense.

§4-4-23. Arson. [Revised 1-24-78]

(1) A person is guilty of arson if he starts a fire or causes an explosion with the purpose of:

(a) destroying a barn, building or an occupied structure of another; or

(b) destroying or damaging any property, whether his own or another's, to collect insurance for such loss.

(2) Definitions:

(a) The term "occupied structure" includes a ship, trailer, sleeping car, airplane or vehicle, structure, or place adapted for overnight accommodation of persons or for carrying on business therein, whether or not a person is actually present.

(b) Property is that of another, for the purposes of this section, if anyone other than the actor has a possessors or proprietary interest therein. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another.

(3) Arson is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-24. Reckless Burning.

(1) A person is guilty of reckless burning if he:

(a) recklessly starts a fire or causes an explosion which endangers human life;

or

(b) damages property of another by reckless use of fire or reckless causing of an explosion; or

(c) having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm.

(2) Reckless burning is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-25. Causing a Catastrophe.

(1) A person is guilty of causing a catastrophe if he, by explosion, fire, flood, avalanche, collapse of a building, release of a poison gas, radioactive material, or other harmful or destructive force or substance, or by any other means, causes actual or potentially widespread injury to persons or property.

(2) Causing a catastrophe is a Class A offense if done purposely or knowingly and a Class B offense if done recklessly.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-26. Criminal Mischief.

(1) A person is guilty of criminal mischief if:

(a) under [circumstances not amounting] to arson, he damages or destroys property with the intention of defrauding an insurer; or

(b) he intentionally and unlawfully tampers with the property of another and thereby:

(i) recklessly endangers human life; or

(ii) recklessly causes or threatens a substantial interruption or impairment of any public utility service; or

(c) he intentionally damages, defaces, or destroys the livestock, domestic animal or other property of another; or

(d) he purposely or recklessly shoots or propels a missile or other object against a motor vehicle, bus, airplane, boat, locomotive, or train, whether moving or standing.

(2) Criminal mischief is a Class B offense unless the actor's conduct causes or was intended to cause pecuniary loss of less than \$100.00 in which case it is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the phrase

"circumstances not amount" at Subsection-1 (a), which has been modified to "[circumstances not amounting]" above.)

§4-4-27. Burglary. [Revised 1-24-78]

(1) A person entering a building, dwelling house, office, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, garage, tent, vessel, railroad car, airplane, or motor vehicle trailer or semitrailer with intent to commit a theft of property, or any Class A or Class B offense, is guilty of the offense of Burglary.

(2) Definitions: "Enter" means an intrusion of any part of the body, or intrusion of any physical object under control of the actor.

(3) Burglary is a Class A offense.

(4) If a person committed a burglary, and committed a Class A offense, which was his purpose to commit after the burglarious entry, he may be convicted for both or all of such offenses, and he may be sentenced to serve each sentence for each conviction consecutively.

(Annotation: Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-28. Tampering with a Vehicle. [Revised 1-24-78]

(1) A person is guilty of tampering with a vehicle if he unlawfully, without authority, tampers with the motor, or removes any item, part, or substance, from a vehicle, so as to render the vehicle immovable.

(2) Tampering with a vehicle is a Class A offense.

(3) The unauthorized removing of any item, part, or substance from a vehicle is a Class B offense.

(Annotation: Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-29. Aggravated Trespass.

(1) A person is guilty of aggravated trespass if he enters or remains unlawfully on property which he is not otherwise privileged to enter or remain and:

(a) accomplishes such entry by an act of force or violence or the use of a key or similar device which provides entry and which device the actor is not authorized or privileged to use for such purpose; or

(b) intends to cause or causes annoyance or injury to any person thereon or damage to any property thereon; or

- (c) intends to commit or commits an offense thereon; or
- (d) is reckless as to whether his presence will cause fear for the safety of another.

(2) Aggravated trespass is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-30. Simple Trespass.

(1) A person is guilty of simple trespass if, knowing his entry or presence is unlawful, he enters or remains on property as to which notice against entry is given by:

(a) personal communication to the actor by the owner or someone with authority to act for the owner; or

(b) fencing or other enclosure obviously designed to exclude intruders; or

(c) posting of signs reasonably likely to come to the attention of intruders.

(2) It is an affirmative defense to simple trespass that:

(a) the property was open to the public when the actor entered or remained and he had not been informed that he should leave or not enter; or

(b) the actor's conduct did not substantially interfere with the owner's use of the property and the actor left the property when asked to do so.

(3) Simple trespass is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-31. Robbery. [Revised 1-24-78]

(1) Robbery consist of the theft of anything of value from the person of another or from the immediate control of another by use of force or violence.

(2) A person who commits robbery is guilty of a Class A offense.

(3) A person who commits robbery with a knife or gun is guilty of a Class A offense, and no suspension of sentence or probation may be granted, and sentence of not less than four months shall be imposed.

(Annotation: Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-32. Consolidation of Theft Offenses; General Provisions.

(1) Conduct denominated in this part of the Code constitutes a single offense embracing the separate offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this part of the Code, notwithstanding a different manner is charged in the complaint, subject only to the power of the Court to ensure a fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

(2) It is an affirmative defense to prosecution for theft that the actor:

(a) acted under an honest claim have right to the property or service involved or that he had a right to acquire or dispose of it as he did; or

(b) obtained or exercised control over the property or service honestly and reasonably believing that the owner if present would have consented.

(3) It is no defense that:

(a) the theft was from the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together; or

(b) the actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe upon.

(4) Possession of property recently stolen, when no satisfactory explanation of such possession is made, shall be deemed prima facie evidence that the person in possession stole the property.

(5) The Tribal Police as well as designated officials of the Bureau of Indian Affairs shall have authority to stop, any vehicle transporting livestock within the exterior boundaries of the Reservation to determine the ownership of such livestock and check for disease or infection.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-33. Grading of Theft Offenses.

(1) Theft of property or service as provided in this part shall be punishable as follows:

(a) if the value of the property or services involved is more than \$500.00, the offense shall be a Class A offense;

(b) if the value of the property or services involved is \$100.00 or more but less than \$500.00, the offense shall be a Class B offense; or

(c) if the value of the property or services involved is less than \$100.00, the offense shall be a Class C offense.

(2) If no evidence as to the value of the property or services involved is presented and the value of such is not obvious without presentation of such evidence, and if it otherwise is [proven] that a theft offense has been committed, the offense shall be a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the word "prove" at Subsection 2, which has been modified to "[proven]" above.)

§4-4-34. Theft of Property.

A person is guilty of theft if he obtains or [exercises] unauthorized control over the property of another with a purpose to deprive him thereof.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the word "exercise" which has been modified to "[exercises]" above.)

§4-4-35. Theft by Deception.

(1) A person is guilty of theft if he obtains or exercises unauthorized control over property of another by deception and with a purpose to deprive him thereof.

(2) A person deceives if he purposely:

(a) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(b) prevents another from acquiring information which would affect his judgment of a transaction; or

(c) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(d) fails to disclose a lien, adverse claim or other legal impediment to the enjoyment of property, which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid or is not a matter of official record.

(3) The term "deceive" does not, however, include matters having no pecuniary significance, or mere puffing by statements unlikely to deceive ordinary persons in the group addressed.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976)

§4-4-36. Theft by Extortion.

(1) A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.

- (2) Extortion occurs when a person threatens to:
- (a) inflict bodily injury on anyone or commit any other criminal offense; or
 - (b) accuse anyone of a criminal offense; or
 - (c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation; or
 - (d) take or withhold action as an official, or cause an official to take or withhold action; or
 - (e) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
 - (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
 - (g) inflict any other harm which would not benefit the actor but which would substantially harm any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

(3) It is an affirmative defense to prosecution based on paragraphs b, c, or d of subsection 2 above that the property obtained by threat of action, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification, for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-37. Theft of Property Lost, Misplaced or Delivered by Mistake.

A person is guilty of theft if he comes into control or possession, of property of another that he knows or reasonably suspects has been lost, misplaced, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with purpose to deprive the owner thereof, fails to take reasonable measures to restore the property to a person entitled to have it.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-38. Theft by Receiving Stolen Property.

(1) A person is guilty of theft if he receives, retains or disposes of the property of another knowing that it has been stolen, or believing that it has probably been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be stolen, with a purpose to deprive the owner thereof.

(2) The requisite knowledge or belief is presumed in the case of a person who:

(a) is found in possession or control of other property stolen on a separate occasion; or

(b) has received stolen property in another transaction within the year preceding the transaction charged; or

(c) being a dealer in property of the sort received, acquires it for a consideration, which he knows or should know, is far below its reasonable value.

(3) As used in this section, "receives" means acquiring possession, control or title, or lending on the security of the property; "dealer" means a person in the business of buying or selling goods.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-39. Theft of Services.

(1) A person is guilty of theft if:

(a) he obtains services, which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment therefore; or

(b) having control over the disposition of services of others, to which he is not entitled, he diverts such services to his own benefit or to the benefit of another not entitled thereto.

(2) Where compensation for service is ordinarily paid immediately upon the rendering of such service, refusal to pay or absconding without payment or offer to pay gives rise to presumption that the service was obtained by deception as to the intent to pay.

(3) "Services" includes, but is not limited to, labor, professional service, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admissions to a place for which a charge for admission is made, the use of vehicles or other moveable or real property.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-40. Theft by Failure to Make Required Disposition of Funds Received.

(1) A person is guilty of theft if he obtains property from anyone, or personal services from an employee, upon agreement, or subject to a known legal obligation to make a specified payment or other disposition to a third person, whether from the property or its proceeds or from his own property in an equivalent amount, and if he deals with the property as his own and fails to make the required payment or disposition.

(2) It is no defense that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.

(3) An officer or employee of the Tribe, government, or of a financial institution is presumed:

(a) to know of any legal obligation relevant to his liability under this section; and

(b) to have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-41. Unauthorized Use of a Vehicle. [Revised 1-24-78]

(1) A person is guilty of unauthorized use of a vehicle if, without the consent of the owner, he takes, drives, or operates another's vehicle, motorcycle, bicycle, or wheeled conveyance, with the intent, temporarily, to deprive the owner of possession of the vehicle, motorcycle, bicycle, or wheeled conveyance, without the intent to steal.

(2) Vehicle, as used in this section and in the Zuni Criminal Code, means any automobile, truck, airplane, motorboat, sailboat, or motor-propelled vehicle.

(3) Unauthorized use of a vehicle is a Class C offense.

(4) Unauthorized use of a vehicle is a Class C offense if the vehicle or motorcycle sustains damages in excess of \$100.00 while in the custody, possession, or under the control of the person violating this section. It shall be no defense that the damage to the vehicle or motorcycle was negligently caused by another.

(Annotation: Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-42. Definitions Applicable to Theft Offenses.

(1) "Property" means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, commodities of a public utility such as water, gas, or electricity, trade or business secrets which the owner thereof intends to be available only to persons selected by him, or any other right, object, labor or service valuable to the owner thereof.

(2) "Property of another" includes property in which any person, company, group or organization other than the actor has an interest, which the actor is not privileged to infringe, regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(3) "Obtain" means, in relation to property, to bring about a transfer or purported transfer of possession or of some other legally recognized interest in property, whether to the obtainer or another; in relation to labor or services, to secure performance thereof; and in relation to a trade or business secret, to make any facsimile, replica, photograph or other reproduction thereof.

(4) "Purpose to deprive" means to have the conscious object:

(a) to withhold property permanently or for so extended a period or to use under such circumstances that substantial portion of its economic value, or the use and benefit thereof, would be lost; or

(b) to restore the property only upon payment of a reward or other compensation; or

(c) to dispose of the property under circumstances that makes it unlikely that the owner will recover it or recover it unharmed.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-43. Forgery.

(1) A person is guilty of forgery if, with purposes to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, he:

(a) alters any writing of another without his authority; or

(b) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or

(c) utters or attempts to circulate as genuine any writing, which he knows to be forged in the manner specified in this section.

(2) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, money, and other symbols of value, right, privilege, or identification.

(3) Forgery is a Class A offense if the writing purports to be money, securities, postage or revenue stamps, or other instruments issued by the Tribe or the government, a will, deed, contract, release, commercial instrument or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations. Otherwise, forgery is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-44. Criminal Simulation.

(1) A person is guilty of criminal simulation if, with purpose to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters

or attempts to circulate or sell as genuine any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

- (2) Criminal simulation is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed had the wording "that he. is facilitating" which has been modified to remove the period.)

§4-4-45. Fraudulent Handling of Recordable Instruments.

(1) A person is guilty of fraudulent handling of recordable instruments if, with purpose to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording or knowingly records a false or forged instrument.

- (2) Fraudulent handling of recordable instruments is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-46. Tampering with Records.

(1) A person is guilty of tampering with records if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

- (2) Tampering with records is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-47. Bad Checks.

(1) A person is guilty of bad checks if he issues or passes a check or similar [signed] order for the payment of money, for the purpose of obtaining any money, property, or other thing of value or paying for any services, rent, wages or salary, knowing or believing that it will not be honored by the drawee.

(2) For the purposes of this Section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or order (other than a postdated check or order) would not be paid if:

(a) the issuer had no account with the drawee at the time the check or order was issued; or

(b) payment was refused by the drawee for lack of funds, upon presentation for payment within 30 days of issue, and the issuer thereafter failed or was intentionally unavailable to make good within 10 days after such refusal and receipt of notice thereof;

(3) Bad checks is a Class A offense if the check or a series of checks issued over a period not exceeding six months exceeds \$500.00; otherwise bad checks is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the "sight" which has been modified to "[signed]" in Subsection 1 above.)

§4-4-48. Fraudulent Use of a Credit Card.

(1) A person is guilty of fraudulent use of a credit card if he uses a credit card for the purpose of obtaining property or services with knowledge that:

(a) The card is stolen; or

(b) The card has been revoked or cancelled; or

(c) For any reason his use of the credit card is unauthorized by either the issuer or the person to whom the card has been issued.

(2) "Credit card" means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(3) Fraudulent use of a credit card is a Class A offense if the value of the property or services secured or sought to be secured by means of the credit card exceeds \$500.00; otherwise, fraudulent use of a credit card is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-49. Deceptive Business Practices.

(1) A person is guilty of deceptive business practices if, in the course of business, he:

(a) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(b) sells, offers or exposes for sale, or delivers less than the represented quality or quantity of any commodity or service; or

(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure; or

(d) sells, offers or exposes for sale adulterated or mislabeled commodities;

(i) "adulterated" means varying from the standard of composition or quality prescribed by law or commercial usage.

(ii) "mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or commercial usage; or

(e) makes a false or misleading statement in any advertisement addressed to the public or a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; or

(f) makes a false or misleading statement for the purpose of obtaining property or credit; or

(g) makes a false or misleading written statement for the purpose of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

(2) It is an affirmative defense to prosecution under this Section if the defendant proves by a preponderance of the evidence that his conduct was not knowingly or recklessly deceptive.

(3) Deceptive business practices are a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-50. Commercial Bribery. [Revised 1-24-78]

Omitted entirely

(Annotation: Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-51. Rigging a Contest.

(1) A person is guilty of rigging a contest if:

(a) with a purpose to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he:

(i) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or

(ii) tampers with any person, animal, or thing; or

(b) he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under this section; or

(c) he knowingly engages in, sponsors, produces, judges, or otherwise [participates] in a publicly exhibited contest knowing that the contest is not being conducted in compliance with the rules and usage purporting to govern it, by reason of conduct, which would be criminal under this section.

(2) Rigging a contest is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the word "participated" in Subsection 1(c), which has been modified to "[participates]").

§4-4-52. Defrauding Creditors.

- (1) A person is guilty of defrauding creditors if:
- (a) he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with purpose to hinder enforcement of that interest; or
 - (b) knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors, he:
 - (i) destroys, removes, encumbers, transfers, or otherwise deals with any property with purpose to defeat or obstruct the operation of any law relating to administration of property for the benefit of creditors; or
 - (ii) knowingly falsifies any writing or recording relating to the property;
 - or
 - (iii) knowingly misrepresents or refuses to disclose to a person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information, which the actor could be legally required to furnish in relation to such administration.
- (2) Defrauding creditors is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-53. Unlawful Dealing with Property by a Fiduciary.

- (1) A person is guilty of unlawful dealing with property by a fiduciary if he deals with the property that has been entrusted to him as a fiduciary, or property of the Tribe or government or of a financial institution, in a manner which he knows is a violation of his duty and which involves a substantial risk of loss to the owner or to a person for whose benefit the property was entrusted.
- (2) As used in this section, "fiduciary" includes a trustee, guardian, executor, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or other organization, which is a fiduciary.
- (3) Unlawful dealing with property by a fiduciary is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-54. Securing Execution of Documents by Deception.

- (1) A person is guilty of securing execution of documents by deception if, by deception, he causes another to execute any instrument affecting or likely to affect the pecuniary interest of any person.

- (2) Securing execution of documents by deception is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-55. Making a False Credit Report.

(1) A person is guilty of making a false credit report if he knowingly makes a materially false or misleading statement to obtain property or credit for himself or another or to keep some other person from obtaining credit.

- (2) Making a false credit report is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-56. Criminal Usury.

(1) A person is guilty of criminal usury when he knowingly engages in or directly or indirectly provides financing for the business of making loans or purchases at a rate of interest or consideration therefore higher than the following:

(a) if the amount to which the interest applies is less than \$100.00 or the period of the loan or financing is less than one year, or both, the rate of interest shall not exceed a 24 percent per annum simple interest rate.

(b) If the amount to which the interest applies is greater than \$100.00 or the period of the loan or financing is greater than one year, or both, the rate of interest shall not exceed an 18 percent per annum simple interest rate.

(2) In computing the interest rate, the following will be considered to be part of the interest charged: all charges payable directly or indirectly by the person receiving the credit as an incident to the extension of credit, including any of the following types of charges: time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee of insurance protecting the seller against the buyer's default or other credit loss, charges incurred for investigating the collateral or credit of the borrower, and commissions or fees charged for obtaining credit.

- (3) Criminal usury is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-57. Bigamy.

(1) A person is guilty of bigamy if, knowing that he has a husband or wife or knowing the other person has a husband or wife, he purports to marry another person or cohabits with another person.

(2) It shall be a defense to bigamy if the defendant proves by a preponderance of the evidence that he reasonably believed that he and the other person were eligible to remarry.

- (3) Bigamy is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-58. Incest.

(1) A person is guilty of incest if he knowingly marries or cohabits or has sexual intercourse or sexual contact with a person he knows to be an ancestor or descendant, brother, sister, aunt, uncle, nephew, niece, or first cousin, any of which are of the whole or half blood, without regard to legitimacy, adoption or step-parent/step-child relationship, while such relationship exists.

- (2) Incest is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-59. Adultery. [Revised 1-24-78]

Deleted entirely.

(Annotation: Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-60. Fornication. [Revised 1-24-78]

Deleted entirely.

(Annotation: Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-61. Criminal Nonsupport.

(1) A person is guilty of criminal nonsupport if, without just cause, he fails to provide for the support of his spouse, child under 18; or other dependent when such persons or any of them are in needy circumstances.

(2) "Child" includes a child born out of wedlock whose paternity has been admitted by the actor or been established in a civil suit.

(3) In a prosecution under this section, it is no defense that the person to be supported received necessary support from a source other than the defendant.

- (4) Criminal nonsupport is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-62. Endangering the Welfare of a Child.

(1) A person is guilty of endangering the welfare of a child if he is a parent, guardian, or other person supervising the welfare of a child under 18 and he knowingly endangers the child's welfare by violating a duty of care, protection or support by intentionally leaving or abandoning a child without care or by otherwise neglecting to care for a child in any manner which threatens serious harm to the physical, emotional or mental well-being of the child.

(2) Endangering the welfare of a child is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also Gasper v. Pueblo of Zuni, 27 SWITCA Rep. 44 (2016) (There are two theories of Endangering the Welfare of a Child and the prosecutor should specify which theory of the charge that they are prosecuting).)

§4-4-63. Abortion.

(1) A person is guilty of abortion if he purposely and unjustifiably terminates the pregnancy of another otherwise than by a live birth.

(2) A licensed physician is justified in terminating a pregnancy if he believes there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother or that the child would be born with grave physical or mental defect, or that the pregnancy resulted from rape or incest. A justifiable abortion shall be performed only in a licensed hospital except in case of emergency when hospital facilities are not available.

(3) No abortion, otherwise justifiable, shall be performed unless two physicians, one of whom may be the person performing the abortion, shall have certified in writing the circumstances which they believe justify the abortion and, when appropriate, all tests and supporting evidence underlying such circumstances. Such certificate shall be submitted before the abortion to the hospital where it is to be performed, and, in case of abortion following rape or incest, to the police. Failure to comply with these requirements will give rise to a presumption that the abortion was unjustified.

(4) A pregnant woman is guilty of abortion if she purposely terminates her own pregnancy otherwise than by a live birth, or she uses instruments, drugs or violence upon herself for [that] purpose.

(5) Except in circumstances otherwise justified, a person who induces or knowingly aids a woman to use instruments, drugs, or violence upon herself for the purpose of terminating her pregnancy otherwise than by a live birth is guilty of abortion.

(6) A person is guilty of abortion if, representing that it is his purpose to perform an abortion, he does an act adapted to use abortion in a pregnant woman although the woman is, in fact, not pregnant, or the actor does not believe she is, or termination of pregnancy results there from.

(7) Abortion is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the word "at" in Subsection 4, which has been modified to "[that]" above.)

§4-4-64. Failure to Send Children to School.

(1) A person is guilty of failure to send children to school if, being the parent, guardian or other person having a child under [18] in his custody and care he, without good cause, neglects or refuses to send such child to school.

(2) Failure to send children to school is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the phrase "child under in the custody" in Subsection (1), which has been modified to include the word "18" above.)

§4-4-65. Bribery in Official Matters.

(1) A person is guilty of bribery in official matters if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(a) any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a Tribal or governmental officer or employee, or as an official of a party or faction or as a voter; or

(b) any benefit as consideration for the recipient's decision, vote recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a Tribal or governmental officer or employee or party official.

(2) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery in official matters is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-66. Improper Influence in Official Matters.

(1) A person is guilty of improper influence in official matters if he:

(a) threatens unlawful harm to any person with purpose to influence another's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official, or voter; or

(b) threatens harm to any public servant or relative of a public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(c) threatens harm to any public servant or party official or relative of either with purpose to influence him to violate his duty; or

(d) privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law.

(2) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(3) Improper influence in official matters is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-67. Compensation for Past Official Behavior.

(1) A person is guilty of compensation for past official behavior if:

(a) he solicits, accepts or agrees to accept any pecuniary benefit as compensation for having, as a public servant given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty; or

(b) he offers, confers or agrees to confer compensation acceptance of which is prohibited by this Section.

(2) Compensation for past official behavior is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-68. Retaliation for Past Official Action.

(1) A person is guilty of retaliation for past official action if he harms any person by any unlawful act in retaliation for anything lawfully done by another person in his capacity as a public servant.

(2) Retaliation for past official action is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-69. Improper Gifts to Public Servants.

(1) A person is guilty of improper gifts to public servants if:

(a) being a public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the Tribe or government, or having custody of prisoners, he shall solicit, accept or agree to accept any valuable benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated; or

(b) being a public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other valuable transactions of the Tribe or government, he shall solicit, accept or agree to accept any valuable benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transactions; or

(c) being a public servant having judicial, legislative, or administrative authority, or being a public servant employed by or in a court or other tribunal having such authority, or being involved in the enforcement of such a tribunal's decisions, he shall solicit, accept, or agree to accept any valuable benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which he is associated; or

(d) he knowingly confers or offers or agrees to confer any benefit prohibited by this section.

(2) This section shall not apply to:

(a) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives lawful consideration or to which he is otherwise entitled; or

(b) gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or

(c) trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(3) Improper gifts to public servants is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-70. Official Misconduct.

(1) A person is guilty of official misconduct if:

(a) being a public servant, and with intent to benefit himself or another or harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a [non-discretionary duty] imposed on him by law or clearly inherent in the nature of his office; or

(b) being a public servant and knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:

(i) acquires or divests himself of a valuable interest in any property, transaction, or enterprise which may be affected by such action or information; or

(ii) speculates or wagers on the basis of such action or information, or knowingly aid another to do any of the foregoing.

(2) Official misconduct is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the phrase "no discretionary duty" at Subsection 1 (a), which has been modified to "[non-discretionary duty]" above.)

§4-4-71. Unofficial Misconduct.

(1) A person is guilty of unofficial misconduct if:

(a) he exercises or attempts to exercise any of the functions of a public office when:

(i) he has not taken and filed the required oath of office; or

(ii) he has failed to execute and file the required bond; or

(iii) he has not been elected or appointed to office; or

(iv) he exercises any of the functions of his office after his term has expired and his successor has been elected or appointed and has qualified, or after his office has been legally removed; or

(b) he knowingly withholds or retains from his successor in office or other person entitled to the official seal or any records, papers, documents or other writings appertaining or belonging to his office or mutilates or destroys or takes away the same.

(2) Unofficial misconduct is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-72. Official Oppression.

(1) A person is guilty of official oppression if, when acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, and knowing that his conduct is illegal, he:

(a) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(b) denies or impedes another in the exercise or enjoyment of any right, power, or immunity.

- (2) Official oppression is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-73. Special Influence.

- (1) A person is guilty of special influence if:

(a) he solicits, receives or agrees to receive any pecuniary benefit as consideration for exerting special influence upon a public servant, or procuring another to do so; or

(b) he offers, confers or agrees to confer any pecuniary benefit receipt of which is prohibited by this section.

- (2) Special influence is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-74. Misusing Public Money.

(1) A person is guilty of misusing public money if, being a public servant or other person charged with the receipt, safekeeping, transfer or disbursement of public monies, he:

(a) without lawful authority appropriates the money or any portion of it to his own use or the use of another; or

(b) loans the money or any portion thereof without lawful authority; or

(c) fails to keep the money in his possession until lawfully disbursed or paid out; or

(d) deposits the money in a bank or with a person not lawfully authorized to receive such; or

(e) knowingly keeps any false account, or makes a false entry or erasure in any account of or relating to the money; or

(f) fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or

(g) knowingly refuses or omits to pay over on lawful demand by competent authority any public monies in his hands; or

(h) knowingly omits to transfer money when transfer is required by proper authority; or

(i) makes a profit for himself or another not lawfully entitled to such, or in an unlawful manner, out of public monies; or

(j) fails to pay over to the proper account or authority any fines, forfeitures, or fees received by him; or

(k) otherwise handles public money in a manner not authorized by law for his own benefit or the benefit of another; or

(l) handles public money in a reckless manner as a result of which a risk of loss of such money is significant.

(m) "Public money" includes all money, bonds, and evidences of indebtedness or their equivalent, belonging to, or received or held by the Tribe or any other government, or any account or money held by the Tribe or government for any individual or group.

(n) Misusing public money is a Class A offense and disqualification to hold public office may be imposed upon proof by a preponderance of the evidence that the actor personally profited in any way by his misuse of public money as defined herein.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-75. Perjury.

(1) A person is guilty of perjury if, in any official proceeding, he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

(2) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law to be decided by the Court.

(3) It is no defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made on oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(4) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(5) Where a defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single complaint alleging in the alternative that one or the other was false and not believed by the defendant. In such case, it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(6) No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

(7) Perjury is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-76. False Swearing.

(1) A person is guilty of false swearing if he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, if:

- (a) the falsification occurs in an official proceeding; or
- (b) the falsification is intended to mislead a public servant in performing his official function; or
- (c) the statement is one, which is required by law to be sworn or affirmed before a notary public or other person authorized to administer oaths.

(2) Subsections (3) to (6) of the Perjury section apply to this section.

(3) False swearing is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-77. Unsworn Falsification.

(1) A person is guilty of unsworn falsification if, with a purpose to mislead a public servant in performing his official function, he:

(a) makes any written false statement which he does not believe to be true;
or

(b) purposely creates a false impression in a written application for any benefit by omitting information necessary to prevent statements therein from being misleading;
or

(c) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object, which he knows to be false.

(2) A person is guilty of unsworn falsification if he makes a written false statement, which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

(3) Subsections (3) to (6) of the Perjury section apply to this section.

(4) Unsworn falsification is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-78. False Alarms.

- (1) A person is guilty of false alarms if he knowingly:
 - (a) causes a false fire alarm or alarm of other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property; or
 - (b) gives false information to any law enforcement officer with purpose to implicate another in an offense; or
 - (c) reports to law enforcement authorities an offense or other incident within their concern knowing or believing that it did not occur; or
 - (d) pretends to furnish law enforcement authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident; or
 - (e) gives a false name or address to a law enforcement officer in the lawful discharge of his official duties.
- (2) False alarms are a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-79. Tampering with Witnesses.

- (1) A person is guilty of tampering with witnesses if:
 - (a) believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:
 - (i) testify or inform falsely; or
 - (ii) withhold any testimony, information, document or thing; or
 - (iii) elude legal process summoning him to testify or supply evidence; or
 - (iv) absent himself from any proceeding or investigation to which he has been legally summoned; or
 - (b) he harms another by an unlawful act in retaliation for anything done by another in his capacity as a witness or informant; or
 - (c) he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in this section.

(2) Tampering with witnesses is a Class A offense if the actor employs force, deception, threat or offer of a valuable benefit; otherwise, tampering with witnesses is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-80. Tampering with Evidence.

(1) A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(a) alters, destroys, conceals or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents or uses any record, document, or thing knowing it to be false and with a purpose to mislead a "[public servant who is or may be engaged in such proceeding]" or investigation.

(2) Tampering with evidence is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed omitted the words "public servant who is or may be engaged in such proceeding" in Section (1)(b), and has been so-inserted to correct the omission.)

§4-4-81. Tampering with Public Records.

(1) A person is guilty of tampering with public records if he:

(a) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to or received or kept by, the Tribe or government or information or record, or required by law to be kept by others for information of the Tribe or government; or

(b) makes, presents or uses any record, document, or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in subsection (a) above; or

(c) purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(2) Tampering with public records is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-82. Impersonating a Public Servant.

(1) A person is guilty of impersonating a public servant if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

- (2) Impersonating a public servant is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-83. Definitions Applicable to This Part.

(1) "Official proceeding" means any proceeding before a legislative, judicial, administrative, or other Tribal or governmental body or official authorized by law to take evidence under oath or affirmation, including a Notary Public or other person taking evidence in connection with any of these proceedings.

(2) "Statement" means any representation, but includes a representation of opinion, belief or other state of mind only if the representation clearly relates to the state of mind apart from or in addition to any facts, which are the subject of the representation.

(3) "Public servant" means any officer or employee of the Tribe or government, including judges and Tribal leaders, and any person participating as juror, advisor, and consultant or otherwise, in performing a governmental function, but the term does not include witnesses.

(4) "Government" includes Tribal, State, local and Federal governments.

(5) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested.

(6) "Benefit" means gain or advantage, or anything regarded as gain or advantage, including benefit to any other person, but not an advantage promised generally to a group or class of voters as a consequence of public measures, which a candidate promises to support or oppose.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-84. Obstructing Governmental Function.

(1) A person is guilty of obstructing governmental function if:

(a) he uses force, violence, intimidation, or engages in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function; or

(b) he purposely obstructs, impairs, or prevents the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

(2) Obstructing governmental function is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-85. Resisting Arrest. [Revised 1-24-78]

(1) A person is guilty of resisting arrest if, for the purpose of preventing a law enforcement officer from effecting a lawful arrest or detention of any person, or of discharging any other lawful duty, the person creates a substantial risk of bodily harm to anyone or employs means justifying or requiring substantial force to overcome the resistance.

(2) Resisting arrest is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also 2/28/1995 Administrative Order (In the Matter of Sentencing Guidelines with Mandatory Jail Sentences; Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-86. Obstructing Justice.

(1) A person is guilty of obstructing justice if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for the commission of an offense, he:

(a) harbors or conceals the other; or

(b) provides or aids in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape; or

(c) conceals or destroys evidence of the offense, or tampers with witness, informant, document or other source of information, regardless of its admissibility in evidence; or

(d) warns the other of impending discovery of apprehension, except if such warning is given in an attempt to get the other person to comply with the law; or

(e) volunteers false information to law enforcement officer for the purpose of preventing the apprehension of another; or

(f) obstructs by force, threat, bribery or deception anyone from performing an act, which might aid in the discovery, apprehension, prosecution or conviction of another person.

(2) Obstructing justice is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-87. Refusing to Aid an Officer. [Revised 1-24-78]

(1) A person over the age of seventeen (17) years is guilty of refusing to aid or assist an officer if he knowingly, purposely, or recklessly refuses to aid or assist:

(a) a fireman in performance of his duties to fight fires when called upon by the fireman to do so and the fireman is actually fighting the fire;

(b) a law enforcement officer in performance of specific duties, and the officer is engaged in carrying out these duties listed below:

(i) taking or arresting a person against whom there is issued any process;

(ii) retaking a person who, after being arrested or imprisoned, has escaped from such arrest or imprisonment;

(iii) preventing a breach of the peace or commission of any criminal offense.

(2) Refusing to aid a fireman is a Class B offense.

(3) Refusing to aid a law enforcement officer is a Class B offense.

(Annotation: Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-88. Escape.

(1) A person is guilty of escape if he unlawfully removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. "Official detention" means arrest, detention in any facility for custody of persons under charge or conviction of crime; or any other detention for law enforcement purposes; but "official detention" does not include supervision of probation or parole, or constraint incident to release on bail.

(2) A person is guilty of escape if he:

(a) aids another person to escape from official detention; or

(b) knowingly provides a person in official detention with anything which may facilitate such person's escape; or

(c) being a person in official detention, he knowingly procures, makes, or possesses anything, which may facilitate escape.

(3) Escape is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also 2/28/1995 Administrative Order (In the Matter of Sentencing Guidelines With Mandatory Jail Sentences).)

§4-4-89. Providing Contraband.

(1) A person is guilty of providing contraband if he knowingly provides a person in official detention with alcoholic beverages, drugs, weapons, implements of escape or any other things or substance, which the actor knows it, is unlawful or improper for the detainee to possess.

(2) Providing contraband is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-90. Bail Jumping.

(1) A person is guilty of bail jumping if, having been released on bail or on his own recognizance by court order or other lawful authority upon condition that he subsequently appear on a charge of an offense, he fails without just cause to appear in person or in the case where a Class B or a Class C offense is charged, by counsel at the time and place which have been lawfully designated for his appearance.

(2) Bail jumping is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-91. Doing Business Without a License.

(1) A person is guilty of doing business without a license if he commences or carries on any business, trade, profession, or calling the transaction or carrying on of which is required by law to be licensed, without having an appropriate license.

(2) Doing business without a license is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-92. Tampering with Public Property.

(1) A person is guilty of tampering with public property if:

(a) he steals, defaces, mutilates, alters, falsifies, or removes a [whole] or part of any record, map, book, document or thing, or any court documents or records, placed or filed in any public office or with any public officer, or if he permits another to do so; or

(b) he knowingly injures, defaces or removes any signal, monument or other marker placed or erected as part of an official survey of the Tribe or state or Federal government without authority to do so; or

(c) he intentionally defaces, obliterates, tears down, or destroys any copy or transcript or extract from any law, or any proclamation, advertisement, or notice set up or displayed by any public officer or court, without authority to do so and before the expiration of the time for which the same was to remain set up.

- (2) Tampering with public property is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed had the wording of "removes a or part of any" in Subsection 1 (a), and the word "[whole]" was inserted above to give proper meaning to the wording.)

§4-4-93. Injuring Public Property.

- (1) A person is guilty of injuring public property if he:

(a) intentionally breaks down, pulls down or otherwise injures or destroys any jail or other place of confinement; or

(b) intentionally and without authority to do so digs up, removes, displaces or otherwise injures or destroys any public road, highway or bridge or private road or bridge or other public building or structure; or

(c) removes or injures any milepost, guidepost or road or highway sign or marker or any inscription on them while such are erected along a road or highway.

(2) Injuring public property is a Class B offense if the injury is to a [jail or] place of confinement or the value of the damage done exceeds \$100.00; otherwise, injuring public property is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed had the word "jailor" at Subsection 2, which has been modified to "[jail or]" above.)

§4-4-94. Failure to Obey a Lawful Order of the Court.

(1) A person is guilty of failure to obey a lawful order of the Court if he purposely or knowingly fails to obey an order, subpoena, warrant or command duly made, issued or given by a Court of the Zuni Tribe or any officer thereof or otherwise issued according to law without just cause.

(2) This section shall not apply to a failure to appear as a party in a civil action where default or a similar remedy is available to the other party.

- (3) Failure to obey a lawful order of the Court is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-95. Riot. [Revised 1-24-78]

- (1) A person is guilty of riot if:

(a) Simultaneously with two (2) or more other persons, he engages in tumultuous or violent conduct in a public place, which endangers persons or property and thereby knowingly or recklessly creates a substantial risk of causing public alarm;

(b) he assembles with two (2) or more persons with the purpose of engaging soon thereafter conduct described in (a) above;

(c) Riot as described in (a) above is a Class B offense when the defendant was intoxicated at the time of offense was committed.

(2) Riot is a Class A offense.

(Annotation: Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-96. Failure to Disperse.

(1) A person is guilty of failure to disperse if he refuses or knowingly fails to obey an order to disperse or leave the immediate vicinity given by a law enforcement officer or other public servant performing a law enforcement function, at the scene of a riot, fire, or other public disorder or given in the course of executing or enforcing the law or in the course of the investigation of the commission of an accident; fire, offense or suspected offense.

(2) Failure to disperse is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-97. Disorderly Conduct. [Revised 1-24-78]

(1) A person is guilty of disorderly conduct if, with a purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(a) engages in fighting or threatening or in violent or tumultuous behavior; or

(b) makes unreasonable noise or offensively coarse utterances, gestures, or displays, or addresses abusive language to any person present; or

(c) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor; or

(d) appears in public places in an intoxicated condition and does any of the following:

(i) passes out or falls or is found asleep in a public place or on the property of another without permission; or

(ii) bothers, disrupts or otherwise intrudes upon another person or group of persons; or

(iii) wanders about without being able to give a reasonable account of his destination to a law enforcement officer; or

(iv) appears or is found in an area set aside for religious or ceremonial activities which have been traditionally or by order of the Tribal or conducting authorities set aside for use free from alcoholic beverage consumption or the presence of intoxicated persons during the period of such a religious or ceremonial activity.

(e) portrays conduct that is disorderly: anywhere upon the Zuni Reservation and including his (her) place of abode, or residence as per paragraph 1 (a), (b), (c), (d).

(2) "Public" means affecting or likely to affect persons in a place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, the common areas of schools, hospitals, apartment houses, and office buildings, transport facilities, businesses open to the public, and places of entertainment or amusement.

(3) Disorderly conduct is a Class C offense.

(4) Disorderly conduct, as described in (d) (iv) is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.; Amended on January 24, 1978; Amended by Zuni Tribal Council Ordinance No. 41 on November 12, 1987 (adding-in Subsection-1(e)); Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-98. False Reports.

(1) A person is guilty of false reports if he initiates or circulates a report or warning of a fire, bombing, or other crime or catastrophe, knowing that the report or warning is false or baseless and that it is likely to cause evacuation of any building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm or action of any sort by an official or volunteer agency organized to deal with emergencies.

(2) False reports are a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-99. Harassment. [Revised February 12, 2020, Resolution No. M70-2020-P023]

(1) A person is guilty of harassment if he knowingly pursues a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.

(2) Harassment is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Amended by Zuni Tribal Council Resolution No. M70-2020-P023 on February 12, 2020, and approved by the BIA on February 22, 2021.)

§4-4-100. Emergency Telephone Abuse.

(1) A person is guilty of emergency telephone abuse if he:

(a) knowingly refuses to yield or surrender the use of a party line or public pay telephone to another person upon being informed that said telephone is needed to report a fire, or summon police, medical or other aid in case of an emergency, unless the actor is already using said telephone to report an emergency; or

(b) asks for or requests the use of a party line or public pay phone on the pretext that an emergency exists, knowing that no emergency exists.

(2) "Emergency" means a situation in which property or human life or safety is in jeopardy and the prompt summoning of aid is or reasonably appears to be essential to preservation of human life, safety or property.

(3) Emergency telephone abuse is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-101. Disrupting.

(1) A person is guilty of disrupting if, with a purpose to prevent or disrupt a lawful meeting, procession or gathering, he does any act tending to obstruct or interfere with it physically, or makes any utterance, gesture or display designed to outrage the sensibilities of the group or prevent the assembly from conducting its business.

(2) Disrupting is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-102. Desecration.

(1) A person is guilty of desecration if he purposely desecrates any public monument or structure, or place of worship or burial.

(2) "Desecrate" means defacing, damaging, polluting or otherwise physically mistreating in a way that the actor knows or believes will outrage the sensibilities of persons likely to observe or discover his action.

(3) Desecration is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-103. Abusing a Corpse. [Revised 1-24-78]

(1) A person is guilty of abusing a corpse if he purposely and unlawfully:

- or
- (a) removes, conceals, dissects, or destroys a corpse or any part of a corpse;
 - (b) disturbs a corpse that has been buried or otherwise interfered; or
 - (c) treats a corpse in a way he knows would outrage ordinary sensibilities.
- (2) Abusing a corpse is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.; Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-104. Cruelty to Animals.

- (1) A person is guilty of cruelty to animals if he purposely or knowingly:
- (a) tortures or seriously overworks an animal; or
 - (b) fails to provide necessary food, care, or shelter for an animal [in] his custody; or
 - (c) abandons an animal in his custody; or
 - (d) transports or confines an animal in a cruel manner; or
 - (e) kills, injures, or administers poison to an animal without legal privilege to do so; or
 - (f) causes one animal to fight with another.

(2) It is a defense to prosecution under this section that the conduct of the actor toward the animal was an accepted veterinary practice or directly related to a bona fide experimentation for scientific research provided that if the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless directly necessary to the veterinary purpose or scientific research involved.

- (3) Cruelty to animals is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the word "is" at Subsection 1 (b), which has been modified to "[in]" above.)

§4-4-105. Violation of Privacy.

- (1) A person is guilty of violation of privacy if, except as authorized by law, he:

(a) trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place; or

(b) installs in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or uses any such unauthorized installation; or

(c) installs or uses outside of any private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there; or

(d) intercepts without consent of the sender or receiver a message by telephone, telegraph, letter or other means of communicating privately; but this subparagraph does not apply to:

(i) overhearing of messages through a regularly installed instrument on a telephone party line or extensions, or

(ii) interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or to other normal operation or use; or

(e) divulges without the consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

(2) Definitions:

(a) "Eavesdrop" means to overhear, record, amplify, or transmit any part of an oral or written communication of others without the consent of at least one party thereto by means of any electrical, mechanical or other device.

(b) "Private place" means a place where one can reasonably expect to be safe from casual or hostile intrusion or surveillance.

(3) Violation of privacy is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-106. Criminal Defamation.

(1) A person is guilty of criminal defamation if he knowingly and with malicious intent communicates to any person orally or in writing any information which he knows or should know to be false and knows that the information tends to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby expose him to public hatred, contempt or ridicule. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown by way of defense.

(2) It shall be a defense to criminal defamation that the person making the publication was at the time engaged in the formal broadcast or publication of news by some public means or media of communication and in good faith believed he was reporting a newsworthy event with a basis in truth.

(3) Criminal defamation is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-107. Intoxication.

(1) A person is guilty of intoxication if, under circumstances not amounting to disorderly conduct, he is under the influence of an intoxicating beverage, drugs or other controlled substance, or a substance having the property of releasing vapors, to a degree that the person may endanger himself or another, in a public place or in a private place where he unreasonably disturbs another person.

(2) A judge or the arresting law enforcement officer may order the release from custody and the dropping of a charge under this section if he believes further imprisonment is unnecessary for the protection of the individual or another and the individual is in a sober condition at the time of release.

(3) Intoxication is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; ; see also 2/28/1995 Administrative Order (In the Matter of Sentencing Guidelines With Mandatory Jail Sentences).)

§4-4-107.B. Possession of Liquor. [Revised 8-14-2012, Ordinance #059]

(1) A person commits an offense pursuant to this section if he or she intentionally or knowingly possesses, or transport any beer, ale, malt, wine, whiskey or any other intoxicating liquor [if] intended for his or her personal use.

(2) Possession of Liquor is a Class C offense.

(3) 4-4-108. Possession of an Alcoholic Beverage by a Person Under 21 is hereby rescinded in its entirety, and in lieu thereof, the following offense is inserted.

(Annotations: Enacted by Tribal Council Ordinance No. 059 on 8/14/2012 and approved by the BIA on August 10, 2012; Special Note: the version from which this was transcribed had the word "is" at Subsection-1, which has been modified to "[if]"above.).

§4-4-108. Manufacture, Sale or Delivery of Intoxicating Liquor. [Revised 8-14-2012, Ordinance #059]

(1) A person commits an offense pursuant to this section if he or she intentionally or knowingly manufactures, sells, barter, delivers, or possesses with intent to deliver, any malt,

spirituuous, or vinous liquor, including beer, ale, wine, and whiskey, or any other intoxicating liquor of any kind whatsoever.

(2) "Deliver" or "delivery" means the actual or constructive transfer of possession of any intoxicating liquor as described above, with or without consideration, whether or not there is an agency relationship.

(3) Presumption. The presumption of 750 milliliters or more of any beverage with an alcohol content of 7% or greater, or the possession of 144 ounces or more of any beverage with an alcohol content of less than 7% shall give rise to the rebuttable presumption that the person possessed such quantity of intoxicating liquor intending to deliver or to sell the same.

(4) The manufacture, sale, or delivery of intoxicating liquor is a Class A offense.
Exceptions:

Exceptions.

(1) It shall not be unlawful for any person to sell, manufacture, deliver, or transport intoxicating liquor if such liquor is intended for scientific, sacramental, medicinal or mechanical purpose.

(Annotations: The original § 4-4-108 (Possession of an Alcoholic Beverage By a Person Under 21) was rescinded in its entirety and replaced with this current version by Tribal Council Ordinance No. 059 on 8/14/2012 and approved by the BIA on August 10, 2012).

§4-4-109. Prostitution.

(1) A person is guilty of prostitution if he or she:

(a) is an inmate or resident of a house of prostitution or otherwise engages in sexual activity as a business; or

(b) loiters in or within view of a public place for the purpose of being hired to engage in sexual activity; or

(c) engages in or offers or agrees to engage in any sexual activity with another person for a fee; or

(d) pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual activity; or

(e) enters or remains in a house of prostitution for the purpose of engaging in sexual activity; or

(f) owns, controls, manages, supervises, or otherwise keeps, alone or in association with another, a house of prostitution or a prostitution business; or

(g) solicits a person to patronize a prostitute; or

(h) procures or attempts to procure a prostitute for another; or

(i) leases or otherwise permits a place controlled by the actor, alone or in association with others, to be used for prostitution or the promotion of prostitution; or

(j) procures an inmate for a house of prostitution; or

(k) encourages, induces, or otherwise purposely causes another to become or remain a prostitute; or

(l) transports a person with a purpose to promote that person's engaging in prostitution or procuring or paying for transportation with that purpose; or

(m) not being the child or legal dependent of a prostitute, shares in the proceeds of a prostitute pursuant to an understanding that he is to share therein; or

(n) owns, operates, manages or controls a house of prostitution; or

(o) solicits, receives, or agrees to receive any benefit for doing any of the acts prohibited by this subsection.

(2) Definitions:

(a) "Sexual activity" means intercourse of any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant.

(b) "House of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(c) "Inmate" means a person who engages in prostitution in or through the agency [of] a house of prostitution.

(d) "Private place" means any place to which the public or a substantial group thereof has access.

(3) On the issue of whether a place is a house of prostitution, the following shall be admissible in evidence: its general reputation; the reputation of the persons who reside in or frequent the place; the frequency, timing and duration of visits by non-residents. Testimony of a person against his spouse shall be admissible to prove offenses under this section.

(4) Prostitution is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the word "if" at Subsection 2(c), which has been modified to "[of]" above.)

§4-4-110. Spreading Venereal Disease.

(1) A person is guilty of spreading venereal disease if, knowing or having reason to believe he has venereal disease, he shall infect another person with venereal disease.

(2) Spreading venereal disease is a Class C offense. The Court shall, upon conviction, have the power to order the medical examination and treatment of the convicted offender and may also [order] an investigation to determine to what extent others have or may have been infected by the convicted offender.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also Lonjose v. Pueblo of Zuni, 28 SWITCA Rep. 1 (2017) (It is an abuse of discretion for the trial court to cut off a defendant's questioning of an alleged victim's possible other sexual partners, which effectively deprives a defendant of developing a defense that other partners could be the source of a venereal infection); Special Note: the version from which this was transcribed used the word "under" at Subsection 2, which has been modified to "[order]" above.).)

§4-4-111. Obscenity.

(1) A person is guilty of obscenity if he:

(a) sells, delivers or provides, or offers or agrees to sell, deliver or provide, any obscene writing, picture, record or other representation or embodiment that is obscene; or

(b) presents or directs an obscene play, dance, or performance, or participates in that portion thereof which makes it obscene; or

(c) publishes exhibits or otherwise makes available any obscene material or

(d) possesses any obscene material for purposes of sale or other commercial dissemination; or

(e) sells, advertises or otherwise commercially disseminates material, whether or not obscene, by representing or suggesting that it is obscene.

(2) Material is obscene if, considered as a whole:

(a) it lacks serious literary, artistic, political, or scientific value; and

(b) it depicts or describes nudity, sex, or excretion in a patently offensive manner that goes substantially beyond customary limits of candor in describing or representing such matters; and

(c) if the average person, applying contemporary community standards, would find that the material, taken as a whole, appeals predominantly to a morbid or unnatural interest in nudity, sex, or excretion.

(3) A person who disseminates or possesses obscene material in the course of his business is presumed to do so knowingly or recklessly.

(4) Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or some other especially susceptible audience.

(5) Undeveloped photographs, molds, printing plates and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(6) Expert testimony and testimony from the author, creator, publisher or other person from whom the material originated, relating to factors entering into the determination of the issue of obscenity, shall be admissible, but such evidence shall not be required to prove obscenity.

(7) It shall be a defense to a prosecution under this section that the dissemination of the obscene material was restricted to institutions or persons having scientific, educational, and governmental or other similar justification for possessing obscene material.

(8) Obscenity is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-112. Gambling.

(1) A person is guilty of gambling if he:

(a) participates in gambling; or

(b) knowingly permits any gambling to be played, conducted, or dealt upon or in any real or personal property owned, rented, or under the control of the actor, whether in whole or in part; or

(c) participates in gambling or wins or acquires to himself or another any gambling proceeds when he knows he has a lesser risk of losing or a greater chance of winning than one or more of the other participants, and the risk is not known to all participants; or

(d) derives or intends to derive an economic benefit other than person winnings from gambling and either:

(i) induces or aids another to engage in gambling; or

(ii) knowingly invests in, finances, owns, controls, supervises, manages, or participates in any gambling operation; or

(e) knowingly possesses a gambling device or record with intent to use it in gambling.

(2) Definitions:

(a) "Gambling" means risking anything of value for a return or risking anything of value upon the outcome of a contest, game, gaming scheme, or gaming device when the return or outcome is based upon an element of chance and is in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome, or a lottery, but does not include any lawful business transaction or playing an amusement

device that confers only an immediate and unrecorded right of reply not exchangeable for value.

(b) "Gambling device or record" means anything specifically designed for use in gambling or use primarily for gambling.

(c) "Lottery" means any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining the property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, regardless of whatever name such scheme may be known by.

(3) The Tribal Council may issue a permit authorizing a lottery provided all benefit therefore, except prizes, go to a charitable or religious organization and provided further that such permit specify the details of the lottery.

(4) It shall not be an offense under this section for a person to engage in any traditional Indian games designated by the Tribal Council as exempt from the provisions of this section.

(5) Gambling is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-113. Weapons Offense. [Revised 1-24-78]

(1) A person shall be guilty of weapons offense if:

(a) being addicted to any narcotic drug, or having been declared mentally incompetent, he has in his actual possession a dangerous weapon;

(b) being intoxicated or otherwise under the influence of alcoholic beverages or other intoxicating substance, drug, or medicine, he has a dangerous weapon in his actual possession;

(c) he carries a loaded firearm in a vehicle on a public road without lawful authority to do so; or

(d) he has on his person a dangerous weapon with intent to unlawfully assault another; or

(e) he discharges any kind of firearm from a motor vehicle or within a village or posted "no shooting" recreation area without lawful authority to do so; or

(f) he discharges a firearm from, upon or across any public highway without lawful authority to do so; or

(g) being under the age of 16 years old, he possesses a firearm without the consent of his parent or guardian.

(2) Definitions:

(a) "Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. In determining whether an item, object or thing not commonly known as a dangerous weapon is a dangerous weapon, the character of the instrument, object or thing, the character of the wound produced, if any, and the manner in which the instrument, item or thing was used shall be determinative.

(b) "Firearms" means pistols, revolvers, rifles, shotguns, and any device that is capable of being used as a weapon because it expels a projectile by some means of force.

(3) A firearm or other weapon shall be deemed loaded when there is an unexpended cartridge, shell or projectile in the firing position, except in the case of pistols and revolvers, in which case they shall be deemed loaded when the unexpended cartridge, shell or projectile is in a position that the manual operation of any mechanism once would cause the unexpended cartridge, shell or projectile to be fired.

(4) Weapons offense is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.; Special Note: the Court is aware of the fact that this section was revised on January 24, 1978, however the Court, Zuni Archives, and Albuquerque BIA are unaware of what those changes are, nor do the Court, Zuni Archives, or Albuquerque BIA have copies of any resolutions amending this section.)

§4-4-114. Aggravated Weapons Offense.

(1) A person is guilty of aggravated weapons offense if:

- (a) he carries a dangerous weapon concealed on his person; or
- (b) he threatens to use or exhibits a dangerous weapon in a dangerous and threatening manner, or uses a dangerous weapon in a fight or quarrel; or
- (c) he possesses a shotgun or rifle having a barrel or barrels of less than 16 inches in length or an altered or modified shotgun or rifle less than 26 inches overall length.

(2) Aggravated weapons offense is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-115. Dangerous Devices.

(1) A person is guilty of dangerous devices if he:

(a) delivers or causes to be delivered to any express, railway company or common carrier, or places in the mail or delivers to any person, or throws or places on or about the premises or property of another or in any place where another may be injured thereby, a dangerous device, knowing it to be such, unless he informs the threatened person of the nature thereof and its placement is for some lawful purpose; or

(b) knowingly constructs or contrives any dangerous device, or with intent to injure another in his person or property, has a dangerous device in his possession.

(2) For purposes of this section, a "dangerous device" is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive or acid or poisonous or inflammable substance, chemical, or compound, or knife, loaded firearm or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its parts, unexpectedly when moved, handled, or opened or after the lapse of time or under conditions or in a manner calculated to endanger health, life, limb, or property.

(3) Dangerous devices is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-116. Tobacco Offense.

(1) A person is guilty of tobacco offense if:

(a) being under the age of 12 years, he purchases, obtains, possesses, smokes, chews, inhales or ingests any product made from or with tobacco; or

(b) he sells to, or otherwise obtains for or arranges for the obtaining of tobacco or a tobacco product for a person under the age of 12, or knowingly permits such a person to operate a machine dispensing tobacco products in his place of business or in an area of a place of business over which he is charged with the management or operation.

(2) Tobacco offense is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-117. Abuse of Psycho-toxic Chemical Solvents.

(1) A person is guilty of abuse of psycho-toxic chemical solvents if:

(a) for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, he purposely.

(i) smells or inhales the fumes of any psycho-toxic chemical solvent; or

(ii) possesses, purchases, or attempts to possess or purchase any psycho-toxic chemical solvents; or

(b) knowing or believing that the purchaser or another intends to use a psycho-toxic chemical solvent in violation of this section, he sells or offers to sell any psycho-toxic chemical solvent.

(2) This section shall not apply to the inhalation of anesthesia for medical for dental purposes.

(3) As used in this section, "psycho-toxic chemical solvents" includes any glue, cement, or other substance containing one or more of the following chemical compounds:

acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

- (4) Abuse of psycho-toxic chemical solvents is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-118. Drug Abuse. [Revised February 12, 2020, Resolution No. M70-2020-P023]

- (1) A person is guilty of drug abuse if he:

(a) shall possess, sell, trade, transport, give away or manufacture an article or substance, which contains any quantity of a substance classified as belonging in Schedule I of the Federal Controlled Substances Act, except peyote in the Native American Church;

(b) shall possess, sell, trade, transport, give away or manufacture any article or substance, which contains any quantity of a substance classified as belonging in Schedule II of the Federal Controlled Substances Act, except as otherwise permitted by federal law;

(c) shall possess, sell, trade, transport, give away or manufacture an article or substance, which contains any quantity of a substance classified as a "controlled substance analogue" under federal law, except as otherwise permitted by federal law; or

(d) shall sell, barter, plant, cultivate, produce, give away, or possess marijuana; or

(e) shall violate any provision of the Federal Controlled Substances Act.

(2) "Marijuana" includes all parts of the plant cannabis sativa L., whether growing or not; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, or any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake except the resin extracted therefore.

(3) Jurisdiction of the Tribal Court shall be concurrent and not exclusive over any offense for which the Federal courts may also have jurisdiction. The Tribal Court shall order delivery to the proper Federal authorities for prosecution of any drug offender for whom the Federal authorities certify they will pursue prosecution in Federal court.

(4) Drug abuse is a Class B offense if the amount of the substance involved is so small as to support a reasonable inference that substance involved was held or possessed for [purposes] of personal consumption only and not for sale or distribution; otherwise, drug abuse is a Class A offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Amended by Zuni Tribal Council Resolution No. M70-2020-P023 on February 12, 2020, and approved by the BIA on February 22, 2021; see also 2/28/1995 Administrative Order (In the Matter of Sentencing Guidelines With Mandatory Jail Sentences); Special Note: the version from which this was transcribed used the word "an" at Subsection (1)(b), which has been modified to "[any]" above; the version from which this was transcribed used the word "purpose" at Subsection-4, which has been modified to the plural of "[purposes]" above.)

§4-4-119. Waters Offense.

- (1) A person is guilty of waters offense if he:
 - (a) interferes with or alters the flow of water in any stream, river, ditch, canal or lateral without lawful authority to do so and in violation of the right of any other person; or
 - (b) knowingly breaks, injures, alters or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so; or
 - (c) takes irrigation water out of turn or in excess amount without lawful authority to do so and in violation of the right of any other person; or
 - (d) pollutes or befouls any water in any of the following ways:
 - (i) constructs or maintains a corral, sheep pen, goat pen, stable, pig pen, chicken coop, or other offensive yard or outhouse where the waste or drainage [therefrom] shall flow directly into the waters of any stream, well, spring, or source of water used for domestic purposes; or
 - (ii) deposits, piles, unloads or leaves any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage [therefrom] will flow directly into the waters of any stream, well, spring or source of water used for domestic purposes; or
 - (iii) constructs, establishes or maintains any corral, yard, vat, pond, camp, or bedding place for the shearing, dipping, washing, storing, herding, holding or keeping of livestock in such proximity to a stream, or other source of water used for domestic purposes or which flows through a city or town, so that the waste, refuse or filth [therefrom], find their way into said source of water; or
 - (iv) knowingly causes or allows any substance harmful or potentially harmful to human life to enter into a source of water used for domestic purposes.
- (2) The presence of lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.
- (3) Waters offense is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the word "therefore" at Subsection-1(d)(i), which has been modified to "[therefrom]" above; the version from which this was transcribed used the word "therefore" at Subsection-1(d)(ii), which has been

modified to "[therefrom]" above; the version from which this was transcribed used the word "therefore" at Subsection-1 (d) (iii), which has been modified to "[therefrom]" above.)

§4-4-120. Public Nuisance.

(1) A person is guilty of public nuisance if, without lawful authority to do so, he does any act or fails to perform any duty, which act or omission either:

(a) unreasonably and substantially annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons; or

(b) offends public decency; or

(c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, highway or road; or

(d) in any way unreasonably renders three or more persons insecure in life or the use of property.

(2) An act or omission to act which affects three or more persons in the ways specified in this section is still a nuisance regardless that the extent of the annoyance or damage inflicted on the individuals is unequal.

(3) The presence of lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.

(4) The commission by act or omission of a public nuisance shall not be punished under this section if the same conduct constitutes another offense, which has also been charged against a defendant.

(5) Public nuisance is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-121. Business Fraud.

(1) A person is guilty of business fraud if:

(a) he signs a fictitious name to a stock subscription or agreement to take or buy stock, or signs such a subscription or agreement with no good faith intent to comply with the terms thereof; or

(b) being an officer, director or managerial level employee, he knowingly exhibits a false, forged, or altered book, paper, voucher, security or other document relating to the business to any person with intent to deceive regarding any aspect of the business; or

(c) he subscribes the name of another to any document relating to the offer or sale of stock or securities in an existing or contemplated business without such other persons to

believe that such person is an officer, agent, member or promoter of the business when he is, in fact, not; or

(d) being an officer, director or managerial level employee of a business, he knowingly causes or allows to be made a false or inaccurate entry in the books or accounts of the business, or purposely misapplies any of the funds of the business, or knowingly does or causes to be done any act not properly authorized by the business management or by law, or makes or concurs in the making of a false report, exhibit or statement of the condition or affairs of the business, or refuses to allow inspection of the business books and records by one having legal authority to do so.

(2) Business fraud is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-122. Contributing to the Delinquency of a Minor.

(1) A person 18 years of age or older is guilty of contributing to the delinquency of a minor if:

(a) he knowingly or recklessly sells or gives to or otherwise makes beer, liquor, wine or other alcoholic beverages available to a person under the age of 21 years; or

(b) he shall knowingly or recklessly, by act or omission, encourages, cause or contribute to the delinquency or unlawful conduct of a minor under 18 years of age.

(2) Contributing to the delinquency of a minor is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also 2/28/1995 Administrative Order (In the Matter of Sentencing Guidelines With Mandatory Jail Sentences).)

§4-4-123. Curfew Violation.

(1) A minor under the age of 18 is guilty of curfew violation if, unless accompanied by a parent or guardian, or unless in attendance at or returning directly home from an organized school, church or Tribal function, he is away from his place of residence in a public place or a private place other than the place where he intends to spend the night with the permission of the owner of such place, or is in a vehicle driving about except as allowed above, after the hour of 11:00 p.m. local time.

(2) Curfew violation is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-124. Fireworks Offense.

(1) A person is guilty of fireworks offense if he possesses, buys, sells, distributes, transports, activates, ignites, or detonates any firecracker or other firework type device which is

capable of or intended to explode, ignite, become self-propelled, give off any projectile, spark or other ignited or fused object or manifestation, or in any way give off sound or light by virtue of its burning or exploding.

(2) It shall not be an offense under this section:

(a) to use or ignite hand-held sparkler type devices in such a manner that they burn openly and singly or to use toy caps and cap guns singly and in the intended fashion; or

(b) to use or ignite fireworks at a patriotic, religious, or Tribal ceremony, gathering, or celebration in a safe manner provided that a permit to do so has been obtained from the Tribal Council prior to the importation and use of such fireworks.

(3) Fireworks offense is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-125. Littering.

(1) A person is guilty of littering if:

(a) he throws, dumps, places or deposits upon the lands of another or any Tribal or public property, or highway, street, road, or other area not his own, without the consent of the owner or other lawful permission, any garbage, debris, junk, carcasses, trash, refuse or other substances of any nature whatsoever which would mar the appearance or detract from the cleanliness of the area; or

(b) he stores, keeps or allows to accumulate any wrecked, junked, or unserviceable vehicles, appliances, or implements within the boundaries of a city, town, community or village, unless he has a permit from the Tribal Council to maintain a junkyard.

(2) Littering is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-126. Livestock Offense.

(1) A person is guilty of livestock offense if he:

(a) knowingly or recklessly refuses or fails to mark or brand his livestock when such is required in the interest of livestock identification or directed by Tribal or government officials; or

(b) alters, obliterates, or removes a brand or mark, or misbrands or mismarks livestock with a purpose to deceive another for any reason; or

(c) knowingly permits his livestock to graze or trespass on the property of another or of the Tribe without permission to do so or in excess of permitted time or amount; or

(d) knowingly refuses to sell, dispose, or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is a substantial danger of infecting other livestock; or

(e) knowingly fails to treat or dispose of a sick animal where there is a substantial danger of infecting other animals; or

(f) fails to dip, inoculate or otherwise treat livestock in the manner which the Tribal Council or its designated representative shall direct; or

(g) makes a false report of livestock owned; or

(h) purposely obstructs or interferes with a livestock roundup.

(2) Except in cases in which the owner or person having custody of livestock believed to be in violation of this section cannot be found after reasonable search, no conviction shall be found for subsections a, c, d, e, or f set forth next above unless the owner or person having custody of the livestock involved is given 48 hours written notice of his alleged violation and he has not after such period of notice remedied the alleged violation.

(3) Livestock found to be in violation of this section may be impounded at the time an arrest is made, and may be impounded without prior notice to the owner if a court so orders upon receipt of evidence that such animals seriously threaten the property of the Tribe or another or the health of other livestock on the Reservation and that immediate action is necessary to protect such interests from serious harm. A reasonable fee for the care of such animals may be collected prior to their release.

(4) Livestock offense is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-127. Welfare Offense.

(1) A person is guilty of welfare offense if:

(a) he gives false information to another for the purpose of obtaining or retaining welfare benefits; or

(b) he knowingly fails to correct misinformation which enables him to obtain or retain welfare benefits; or

(c) he continues to accept and use for his own benefit or the benefit of another, welfare benefits to which he knows he is not entitled; or

(d) he uses or expends money or commodities granted him as a welfare benefit in an improper manner or in a manner, which does not proportionately benefit each of those persons intended to benefit by the grant.

(e) he knowingly uses a welfare benefit in a manner contrary to the regulations relating thereto.

- (2) Welfare offense is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§4-4-128. Stalking. [Revised February 12, 2020, Resolution No. M70-2020-P023]

(1) A person is guilty of stalking if, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, engages in conduct or a course of conduct that:

(a) places that person in reasonable fear of the death of, or serious bodily injury to

(i) that person;

(ii) an immediate family member of that person; or

(iii) a spouse or intimate partner of that person; or

(b) causes, attempts to cause, or would be reasonably [be] expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (a).

- (2) Stalking is a Class B offense.

(Annotations: Enacted by Zuni Tribal Council Resolution No. M70-2020-P023 on February 12, 2020, and approved by the BIA on February 22, 2021; Special Note: the version from which this was transcribed lacked the word "[be]" at Subsection-1(b), which has been inserted above.)

§4-4-129. Unauthorized Distribution of Sensitive Images. [Revised February 12, 2020, Resolution No. M70-2020-P023]

(1) A person is guilty of unauthorized distribution of sensitive images if he distributes, publishes or otherwise makes available, by an electronic communications device or other means, sensitive images of a person, with or without information identifying that person, without that person's consent:

(a) with the intent to:

(i) harass, humiliate or intimidate that person;

(ii) incite another to harass, humiliate or intimidate that person;

(iii) cause that person to reasonably fear for that person's own or family members' safety;

(iv) cause that person to suffer unwanted physical contact or injury; or

(v) cause that person to suffer substantial emotional distress; and

(b) where the conduct is such that it would cause a reasonable person to suffer substantial emotional distress.

(2) For the purpose of this section:

(a) "electronic communications device" means a computer, an internet web site or page, a video recorder, a digital camera, a fax machine, a telephone, a cellular telephone, a pager or any other device that can produce an electronically generated image, message or signal;

(b) "information service" means a service offering the capability of generating, acquiring, storing, transforming, processing, publishing, retrieving, utilizing or making available information;

(c) "interactive computer service" means any information service, system or access software provider that provides or enables computer access by multiple users;

(d) "sensitive images" means images, photographs, videos or other likenesses depicting or simulating a sexual act or depicting any portion of a person's genitals, or of a woman's breast below the top of the areola, that is either uncovered or visible through less-than-fully opaque clothing, which images may reasonably be considered to be private, intimate or inappropriate for distribution or publication without that person's consent.

(3) Nothing in this section shall be construed to impose liability on:

(a) an interactive computer service, an information service or a telecommunications provider for content provided by another person; or

(b) a person who reproduces, distributes, exhibits, publishes, transmits or otherwise disseminates content in furtherance of a legitimate public purpose, including the compilation or dissemination of news by newspapers and licensed broadcasters.

(4) Unauthorized Distribution of Sensitive Images is a Class C offense.

(Annotations: Enacted by Zuni Tribal Council Resolution No. M70-2020-P023 on February 12, 2020, and approved by the BIA on February 22, 2021.)

§4-4-130. Elder Exploitation and Neglect. [Revised February 12, 2020, Resolution No. M70-2020-P023]

(1) A person is guilty of exploitation if he intentionally, knowingly or recklessly makes an unjust or improper use of an elder adult's money or property for his own or another person's profit or advantage, pecuniary or otherwise.

(2) Exploitation shall be punishable as follows:

(a) if the value of the property or services involved is more than \$500.00, the offense shall be a Class A offense;

(b) if the value of the property or services involved is \$100.00 or more but less than \$500.00, the offense shall be a Class B offense; or

(c) if the value of the property or services involved is less than \$100.00, the offense shall be a Class C offense.

(3) A person is guilty of neglect if he has assumed the responsibility for the care of an elder adult and intentionally, knowingly or recklessly fails to provide for the basic needs of the elder adult, such as clothing, food, shelter, supervision and care for the physical and mental health of that elder adult.

(4) In a prosecution for neglect under this section, it is no defense that the elder adult received necessary support from a source other than the defendant.

(5) "Elder adult" means an adult at least 65 years old.

(Annotations: Enacted by Zuni Tribal Council Resolution No. M70-2020-P023 on February 12, 2020, and approved by the BIA on February 22, 2021.)

END OF TITLE IV. ZUNI CRIMINAL CODE

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TITLE V. ZUNI TRIBAL POLICE CODE

§5-1-1. Authority Over Police Function.

(1) The Governor under the direction of the Tribal Council shall have ultimate responsibility for and command over the Zuni Tribal Police.

(2) The Tribal Council may appoint one of its members to be responsible for Tribal police business and such member shall keep himself informed regarding Tribal police matters and report thereon to the Tribal Council.

(3) The Tribal Council shall appoint a director of the Law and Order Division and a Chief of Police upon such terms and conditions of employment as they shall direct.

(4) The Chief of Police with the concurrence of the Tribal Council shall establish such ranks and appoint officers thereto within the Tribal police as are deemed necessary.

§5-1-2. Director of the Law and Order Division.

The duties of the Director of the Law and Order Division shall be as follows:

(1) To work with the Chief of Police in administering the operations, programs, and policies of the tribal police.

(2) To be administratively responsible for the operation of other law and order related functions including the work of probation and juvenile officers and agents under the supervision of the Chief Judge, and, to the extent requested by the Chief Judge of the Tribal Court, the clerks of the Courts of the Zuni Tribe and other court operations.

(3) To perform such other functions as the Governor or Tribal Council shall direct.

§5-1-3. Chief of Police.

The duties of the Chief of Police shall be as follows:

(1) To be responsible for and have charge over all tribal police functions on the Reservation;

(2) To be in command of all Tribal law enforcement officers and employees;

(3) To instruct, train and advise Tribal police officers in the functions, duties and responsibilities of police officers for the efficient maintenance of law and order on the Reservation;

(4) To report to the Governor and Tribal Council on police activities;

(5) To recommend to the Tribal Council persons for appointment to and dismissal from the Tribal police force;

(6) To provide policemen to the Tribal Courts to perform bailiff service, transportation of prisoners, and service of Court papers;

- (7) To adopt reasonable regulations for police officers to serve as a standard of conduct to insure the efficient maintenance of law and order;
- (8) To encourage cooperation with other law enforcement agencies;
- (9) To do such other law enforcement related activities, as the Tribal Council shall direct;
- (10) To designate an acting Chief of Police to serve as Chief of Police in his absence.

§5-1-4. Appointment and Qualification of Police Officers.

(1) Tribal police officers shall be hired upon such terms and conditions of employment as the Tribal Council or personnel committee shall direct. The Tribal Council shall receive the recommendation of the Chief of Police prior to hiring anyone to be a police officer.

(2) The qualifications of Tribal police officers shall be as follows:

(a) The individual must be in sound physical and mental condition and of sufficient size and strength to perform the required duties.

(b) He must be willing and able to attend police officer training courses as a condition to his hiring and continued employment.

(c) He must be of high moral character and have never been convicted of a felony or Class A offense or any other offense within one year prior to appointment.

(d) Preference in hiring shall be given to members of the Tribe and to high school graduates in situations where qualifications are otherwise similar.

§5-1-5. Duties of Tribal Policemen.

The duties of a Tribal Policeman shall be:

(1) To obey promptly all orders of the Chief of Police, ranking police officers, or a judge of the Tribal Court when assigned to Court duty.

(2) To report and investigate all violations of any law regulation coming to his attention.

(3) To arrest all persons for violations of the laws and regulations when there exists sufficient grounds for doing so.

(4) To lend assistance to other officers.

(5) To prevent, whenever possible, violations of the laws.

(6) To inform himself as to the Tribal Law and Order Code all other laws and regulations applicable to the Reservation, to attend such training sessions as the Tribal Council or Chief of Police may direct.

- (7) To become familiar with and practice at all times principles of good police procedure.
- (8) To use no unnecessary force or violence in making arrest, search, or seizure.
- (9) To abstain from the use of narcotics or the excessive of alcohol and to refrain from engaging in any act which would reflect discredit on the Tribe or the Tribal police.
- (10) To refrain from the use of profane, vulgar, insolent, offensive language.
- (11) To report to his superior officers all deaths or accidents of a serious nature or other events or impending events of importance.
- (12) To keep all equipment furnished by the Tribe or government in good repair and order and to immediately report the loss of any or all of such property.
- (13) To obey all regulations which the Chief of Police shall adopt.

§5-1-6. Dismissal of Police.

A policeman can be suspended or dismissed for noncompliance with the provisions of this Code or other violations of regulations or neglect of duty.

§5-1-7. Deputizing.

- (1) Tribal police may be deputized by another jurisdiction to aid in the effective law enforcement on the Reservation.
- (2) Law enforcement officers and other law enforcement or security related personnel from other jurisdictions or other departments or enterprises of the Tribe may be deputized to aid in the enforcement of this Law and Order Code.

§5-1-8. Police Training.

It shall be the goal of the Tribal police to attract and retain experienced, professional police personnel. To this end, the Tribal Council and the Chief of Police shall establish minimum standards of training, which all police officers will be encouraged to meet. Further, the Chief of Police shall explore, schedule, and arrange periodic training and retraining programs for Tribal police officers from all available sources. Such programs shall stress not only basic police procedures and techniques, but shall also deal with crime prevention, community and public relations, and other appropriate topics.

END OF TITLE V. ZUNI TRIBAL POLICE CODE

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TITLE VI. ZUNI TRAFFIC CODE

§6-1-1. Definitions.

A. The term "motor vehicle" shall mean every self-propelled device by which any person or property is or may be transported upon a roadway. "Motor vehicle" does not include any device, which is designed or used principally for agricultural, construction or maintenance purposes, excepting trucks. Any device which is designed or used principally for agricultural, construction or maintenance purposes which is driven on Zuni roadways shall have the safety equipment listed in Section 6-1-26 of the Zuni Traffic Code and the driver of such device shall comply with the Zuni Traffic Code and any applicable licensing provision of the New Mexico Motor Vehicle Code.

B. A "roadway" is defined as the entire width between the boundary lines of every right of way open to public use for the purpose of travel by motor vehicles within the boundaries of the Zuni Reservation, which is maintained by any governmental agency, including the Pueblo of Zuni.

C. Unless otherwise defined, "driver's license" includes any duly authorized motor vehicle operators, chauffeurs or commercial license to operate a motor vehicle within the state of New Mexico or any other state in the United States. A "valid driver's license" is one which has not been suspended, cancelled or revoked by any state in the United States or by the Zuni Tribal Court.

D. This code is only applicable to Indians. Non-Indians who commit traffic offenses on the Zuni Reservation shall be prosecuted under applicable Arizona and New Mexico law.

§6-1-2. Driving License Requirement.

A. Any person who operates a motor vehicle upon any roadway within the boundaries of the Zuni Reservation shall have in his possession a valid driver's license and upon demand by a law enforcement officer shall produce such license.

B. Any person driving a motor vehicle upon any roadway without having a valid driver's license is guilty of a Class C offense.

C. Any person driving a motor vehicle without a valid driver's license because it has been suspended, cancelled and/or revoked by any court is guilty of a Class B offense. Upon conviction for this offense, in addition to such other penalties as provided by the Zuni Tribal Code, the Zuni Tribal Court may suspend that person's driving privileges on the reservation for up to an additional six months.

D. Any person who uses or possesses an altered, forged or fictitious driver's license, or who alters or forges a driver's license or who makes a fictitious driver's license, is guilty of a Class B offense.

§6-1-3. Unlawful Use of License.

It is an unlawful use of a driver's license and a Class C offense for any person to:

- A. display or cause or permit to be displayed any canceled, revoked or suspended driver's license;
- B. display or cause or permit to be displayed or have possession of any license use of which has been suspended by the Zuni Tribal Court.
- C. knowingly permit the use of his license by another;
- D. display or represent as one's own any driver's license not issued to him;
- E. fails or refuse to surrender to the Zuni Tribal Court upon its lawful demand any driver's license, which has been suspended, revoked or canceled;
- F. permit any unlawful use of his driver's license.

§6-1-4. Careless Driving.

- A. Any person operating a motor vehicle within the boundaries of the Zuni Reservation shall give his full time and entire attention to the operation of such motor vehicle.
- B. Any person who operates a motor vehicle in a careless, inattentive or imprudent manner without due regard for the width, grade, curves, comers, traffic, weather and road conditions, and all other attendant circumstances is guilty of a Class C offense. This offense shall be a lesser-included offense to the offense of reckless driving.

§6-1-5. Reckless Driving.

- A. Any person who drives any motor vehicle within the boundaries of the Zuni Reservation in willful or wanton disregard of the rights or safety of others, or at a speed or in a manner, which endangers or is likely to endanger any person or property, is guilty of reckless driving.
- B. Every person convicted of reckless driving is guilty of a Class B offense. In addition to any other sentence imposed, the court may suspend such person's driving privileges within the boundaries of the Zuni Reservation for a period not to exceed six months.

§6-1-6. Persons Under Influence of Intoxicating Liquor or Drugs.

- A. It is unlawful for any person to operate a motor vehicle within the boundaries of the Zuni Reservation while under the influence of any intoxicating liquor or drug to a degree, which renders him incapable of driving safely.
- B. It shall be unlawful for any person who has .08 or more by weight of alcohol in his blood to drive any motor vehicle within the boundaries of the Zuni Reservation.
- C. Every person convicted under this section for the first time shall be punished by imprisonment for not less than ten (10) days and by a fine of not less than one hundred dollars (\$100). Any time spent in jail for the offense prior to the conviction for such offense shall be credited to any term of imprisonment fixed by the court. In the case of a first conviction under this section, the court may suspend the jail sentence on the condition that the driver attend a

driver rehabilitation program approved by the court and participate in such other rehabilitative services as the court may determine to be necessary.

D. A second or subsequent conviction under this section shall be punished by imprisonment for not less than fifteen (15) days and not more than six months and or a fine of not less than two hundred dollars (\$200) or more than five hundred dollars (\$500). If the sentence of incarceration is less than six months, that person may also be sentenced to a community service or a work release-type program for all or part of the difference between the period of full-time incarceration and six months. Failure to satisfactorily comply with the terms of the community service or work release program shall require imprisonment for the remainder of the community service or work release sentence. This sentence for second or subsequent convictions is mandatory and may not be suspended.

E. Upon conviction or other disposition under this section, the offender shall be ordered by the court to be evaluated for the purpose of determining the offender's level of alcohol abuse and recommending treatment, if necessary. The offender shall complete any recommended treatment program required by the court. In addition to any other fine or fee, which may be imposed pursuant to the conviction or other disposition of the offense under this section, the offender shall pay the costs of any court-ordered screening and treatment programs.

F. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs, the trial judge must review the past driving record of the person before imposing sentence.

G. As used in this section, "conviction" means an adjudication of guilt and does not include imposition of a sentence.

H. Any person violating any provision of this section is guilty of a Class A offense.

§6-1-7. Implied Consent to Submit to Chemical Test.

A. Any person who operates a motor vehicle within the boundaries of the Zuni Reservation shall be deemed to have given consent, subject to the provisions of Sections 6-1-7 through 6-1-10, to submit to chemical tests of his breath or blood, as determined by a law enforcement officer, for the purpose of determining the drug or alcoholic content of his blood if probable cause exists to arrest the person for any violation of Section 6-1-6, above.

B. A test of blood or breath shall be administered pursuant to Section 6-1-8(A), at the direction of a law enforcement officer having probable cause to believe the person was driving a motor vehicle in violation of Section 6-1-6, above.

C. Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal to submit to such testing, shall be deemed not to have withdrawn the consent provided by this section, and the test or tests designated by the law enforcement officer may be administered.

§6-1-8. Administration of Chemical Test; Payment of Costs; Additional Tests.

A. Only a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician shall withdraw blood from any person for the

purpose of determining its alcoholic content or the presence of drugs. This limitation does not apply to the taking of samples of breath.

B. The person tested shall be given an opportunity to arrange for a physician, licensed professional or practical nurse, or laboratory technician or technologist who is employed by a hospital or physician, of the person's choosing to perform a chemical test in addition to any test performed at the direction of a law enforcement officer.

C. Upon the request of the person tested, full information concerning the test or tests performed at the direction of the law enforcement officer shall be made available to the person tested as soon as it is available.

D. If the test is performed at the direction of a Zuni Police Department officer, it shall be paid for by the Zuni Police Department.

E. If a person exercises his right under Subsection B to have an additional chemical test performed by a person of his own choosing, the cost of the testing shall be paid by the person requesting the test.

§6-1-9. Use of Tests in Criminal Actions or Civil Actions; Levels of Intoxication; Mandatory Charging.

A. The results of a test performed pursuant to Section 6-1-8 may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drugs.

B. If the blood of the person tested contains:

(1) five one-hundredths of one percent or less by weight of alcohol, it shall be a rebuttable presumption that the person was not under the influence of intoxicating liquor; or

(2) more than five one-hundredths of one percent but less than .08 by weight of alcohol, no presumption shall be made that the person either was or was not under the influence of intoxicating liquor. However, the amount of alcohol in the person's blood may be considered with other competent evidence in determining whether or not the person was under the influence of intoxicating liquor, in violation of Section 6-1-6(B);

(3) .08 or more by weight of alcohol, it shall be conclusively presumed that person was operating a motor vehicle in violation of Section 6-1-6, above.

C. If the blood of the person tested contains .08 or more by weight of alcohol, the arresting officer shall charge him with a violation of Section 6-1-6.

D. The percent by weight of alcohol shall be based on the grams of alcohol in one hundred cubic centimeters of blood.

E. The presumptions in Subsections B (1) and (2) of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor or drugs to a degree which rendered him incapable of driving safely.

§6-1-10. Refusal To Submit To Chemical Testing; Revocation Of License; Right To Hearing; Other Competent Evidence. [Revised February 12, 2020, Resolution No. M70-2020-P023]

A. Any person placed under arrest for a violation of Section 6-1-6 who refuses to submit to a breath or chemical test, shall have their privilege to drive within the boundaries of the Zuni Reservation suspended for a period of ninety (90) days from the date of arrest, and receive a citation noticing the suspension of the person's privilege to drive. Such person shall have the right to a hearing before the Zuni Tribal Court if a request is made to the Zuni Tribal Court within ten (10) days of arrest.

B. Any person who has been convicted anywhere of driving while under the influence of intoxicating liquor or drugs and who was placed under arrest for violation of Section 6-1-6 who submits to a chemical test, the results of which show .08 or more by weight of alcohol in that person's blood, or that the person was under the influence of drugs to a degree which rendered him/her incapable of driving safely, shall have their privilege to drive within the boundaries of the Zuni Reservation suspended for a period of ninety (90) days from the date of arrest, and receive a citation noticing the suspension of the person's privilege to drive. Such person shall have the right to a hearing before the Zuni Tribal Court if a request is made to the Zuni Tribal Court within ten (10) days of arrest.

C. In prosecutions for violation of Sections 6-1-4, 6-1-5, 6-1-6, 6-1-11, or 6-1-15, the refusal to submit to a breath or chemical test or the absence of admissible test results does not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor or drugs to a degree which rendered him incapable of driving safely.

(Annotations: Enacted by Zuni Tribal Council Resolution No. M70-2020-P023 on February 12, 2020, and approved by the BIA on February 22, 2021.)

§6-1-11. Intoxicated Persons; Motor Vehicles.

It shall be a Class B offense for a person under the influence of intoxicating liquor or drug to a degree, which renders that person incapable of driving safely to:

A. interfere with the control of a motor vehicle operated by another person, on or immediately adjacent to a roadway, even if the motor vehicle is owned by or in lawful possession of the intoxicated person; or

B. be the sole occupant of a motor vehicle parked on or immediately adjacent to a roadway when seated in the driver's seat with possession or control of the ignition keys of that motor vehicle.

§6-1-12. Open Containers.

No person shall drink any alcoholic beverage or have in his possession an open receptacle containing an alcoholic beverage, while in a motor vehicle upon any roadway within the boundaries of the Zuni Reservation. Any person who violates this section is guilty of a Class C offense.

§6-1-13. Permitting Unauthorized Person to Drive.

It shall be a Class B offense to knowingly cause or permit any person who is unlicensed or under the influence of intoxicating liquor or drugs to a degree which renders him incapable of driving safely, to operate a motor vehicle upon any roadway.

§6-1-14. Duties of Drivers Involved in Accidents Involving Death or Personal Injury.

A. The driver of any motor vehicle involved in an accident resulting in injury to or death of any person, or damage to any other moving or attended motor vehicle shall immediately stop his motor vehicle at the scene of the accident or as close thereto as possible. Such driver shall immediately return to and remain at the scene of the accident and render any aid and assistance as may be necessary under the circumstances. Such driver shall give his name, address, motor vehicle registration number and his driver's license number to all other persons involved in the accident.

B. Any person who violates this section is guilty of a Class A offense.

§6-1-15. Homicide by Motor Vehicle; Great Bodily Injury by Motor Vehicle.

A. Homicide by motor vehicle is the killing of a human being resulting from the unlawful operation of a motor vehicle.

B. Great bodily injury by motor vehicle is the injuring of a human being resulting from the unlawful operation of a motor vehicle.

C. Any person who commits homicide by motor vehicle or great bodily injury by motor vehicle while operating a motor vehicle in violation of Section 6-1-6 above is guilty of a Class A Offense.

D. Any person who commits homicide by motor vehicle or great bodily injury by motor vehicle who is operating the motor vehicle in violation of the Zuni Traffic Code, except Section 61-6 above, is guilty of a Class B offense.

§6-1-16. Duty Upon Striking Unattended Motor Vehicle.

A. The driver of any motor vehicle, which collides, with any unattended motor vehicle shall immediately stop and attempt to locate and notify the operator or owner of the unattended motor vehicle of both the name and address of the driver and owner of the motor vehicle striking the unattended motor vehicle. If neither the owner nor operator of the unattended motor vehicle can be located, the driver shall leave securely attached in a place where it may be easily seen in the unattended motor vehicle stricken, a written notice giving the name and address of the driver and the circumstances thereof. The driver shall also notify the Zuni Tribal Police of the details of the accident and, upon request of a law enforcement officer, exhibit his driver's license, registration and proof of insurance.

B. Any person who violates this section is guilty of a Class C offense.

§6-1-17. Duty Upon Striking Fixtures or Other Property Upon a Roadway.

A. The driver of any motor vehicle involved in an accident resulting in damage to fixtures or other property upon or adjacent to a roadway shall take reasonable steps to locate and notify the owner or person in control of such property of the accident, and of the driver's name, address and the registration number of the motor vehicle being driven. The driver shall also notify the Zuni Tribal Police of the details of the accident and, upon request, exhibit his driver's license, registration and proof of insurance.

B. Any person who violates this section is guilty of a Class C offense.

§6-1-18. Occupant to Report if Driver Unable.

A. Any occupant in a motor vehicle involved in an accident who knows that the driver is physically unable to report such accident shall report the accident to the Zuni Tribal Police.

B. Any person who violates this section is guilty of a Class C offense.

§6-1-19. Stopping and Turning Safety; Signal Devices.

A. No person shall turn a motor vehicle to enter a private road or driveway, otherwise turn a motor vehicle from a direct course following a roadway, or move right or left upon a roadway, unless and until such movement can be made with reasonable safety. No such movement shall be made without an appropriate signal either by hand or directional signal device.

B. A signal of intention to turn right or left, or otherwise depart from a direct course on the roadway, shall be continuously given during not less than the last one hundred feet traveled by the motor vehicle before turning.

C. No person shall stop or suddenly decrease the speed of a motor vehicle without first giving an appropriate signal in the manner provided herein, to the driver of any motor vehicle immediately to the rear when there is opportunity to give such signal.

D. The signals required shall be given either by means of the hand and arm or by a signal lamp device. When signals are given by the hand and arm, they shall be given from the left side of the motor vehicle and such signals shall be indicated as follows:

- (1) Left turn, left hand and arm extended horizontally.
- (2) Right turn, left hand and arm extended upward.
- (3) Stop or decrease speed, left hand and arm extended downward.

E. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-20. Driving on Roadways Laned for Traffic.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply:

- A. A motor vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made safely;
- B. A motor vehicle shall be driven so as not to drift between lanes except when safely passing a car proceeding in the same direction;
- C. A motor vehicle shall not be driven in the center lane upon a roadway, which is divided, into three lanes, except when overtaking and passing another motor vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance.
- D. A driver of a motor vehicle shall obey official signs directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway.
- E. A driver of a motor vehicle shall drive upon the right half of the roadway, and where practicable, entirely to the right of the center thereof, except as follows:
 - (1) when lawfully overtaking and passing another motor vehicle proceeding in the same direction;
 - (2) when the right half of a roadway is closed to traffic; or
 - (3) when a roadway is designated and sign-posted for one-way traffic.
- F. A driver of a motor vehicle shall not drive on the right shoulder to pass another motor vehicle.
- G. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-21. Following too Closely.

- A. The driver of a motor vehicle shall not follow another motor vehicle more closely than is reasonable and prudent, having due regard for the speed of the motor vehicle, stopping distances involved, traffic, and the condition of the roadway.
- B. Any person who violates this section is guilty of a Class C offense.

§6-1-22. Entering Roadway From Private Road.

- A. The driver of a motor vehicle about to enter or pass a roadway from a private road or driveway shall yield the right of way to all motor vehicles approaching on the roadway.
- B. Any person who violates this section is guilty of a Class C offense.

§6-1-23. Passing Oncoming Motor Vehicles; Passing School Bus.

A. No motor vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another motor vehicle proceeding in the same direction unless the left side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completed safely. The overtaking motor vehicle must return to the right-hand side of the roadway before coming within one hundred (100) feet of any motor vehicle approaching from the opposite direction.

B. No motor vehicle shall at any time be driven to the left side of the center of the roadway when:

(1) approaching the crest of a grade or a curve in the roadway where the driver's view is obstructed within such distance as to create a hazard in the event another motor vehicle might approach from the other direction.

(2) approaching within one hundred (100) feet of any intersection or railroad grade crossing;

(3) the view is obstructed upon approaching within one hundred (100) feet of any bridge, viaduct or tunnel.

C. The foregoing provisions shall not apply on a one-way roadway.

D. The driver of a motor vehicle approaching a school bus in either direction which has stopped on the roadway with special school bus signals in operation, shall stop the motor vehicle at least twenty-five (25) feet before reaching the school bus and shall not proceed until the special school bus signals are turned off, the school bus resumes motion or until signaled by the driver to proceed.

E. Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "School Bus" in letters not less than eight inches high.

F. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-24. No Passing Zones.

A. Where no passing signs or markings such as a double yellow or single solid center road lines are in place, no driver shall drive on the left side of the roadway within the no- passing zone throughout its length.

B. Any person who violates this section is guilty of a Class C offense.

§6-1-25. At Stop Sign; Yielding Right of Way at Intersection.

A. Unless directed by an officer directing traffic, the driver of a motor vehicle shall come to a full and complete stop at all intersections marked by a stop sign before entering the intersection, and shall yield the right-of-way to any motor vehicle which has entered the

intersection from another roadway or which is approaching so closely from the other roadway that the driver cannot safely proceed through the intersection.

B. The driver of a motor vehicle approaching an unmarked intersection shall decrease the speed of the motor vehicle and shall yield the right of way to any motor vehicle approaching from the right, unless otherwise directed by sign, traffic light or an officer directing traffic.

C. The driver of a motor vehicle approaching a yield sign shall slow down to a speed reasonable for the existing conditions, and shall yield the right-of-way to any motor vehicle in the intersection or approaching on another roadway so closely from the other roadway that the driver cannot safely proceed through the intersection.

D. Any person who violates any provision of this section is guilty of a Class offense.

§6-1-26. Motor Vehicle Equipment Requirements: Conditions Requiring Lamp Illumination.

A. Every motor vehicle upon a roadway at any time from a half-hour after sunset to a half-hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible persons, objects or motor vehicles on the roadway at a distance of five hundred (500) feet ahead, shall display lighted lamps and illuminating devices.

B. All motor vehicles shall be equipped with the following in proper working order:

(1) HEAD LAMPS: Two multi-beam headlamps, one on each side of the front of the motor vehicle, so that the driver can adjust the lamps from bright to dim. Headlamps must be capable of being seen by oncoming traffic as stated in sub-section A, above. The distribution of light or composite beam shall be aimed so that the glaring rays are not projected into the eyes of an oncoming driver.

(2) TAIL LAMPS:

a. Two red lamps on the back of the motor vehicle, which when on, are plainly visible for a reasonable distance to the rear.

b. Either a tail lamp or a separate lamp emitting a white light, which illuminates the rear registration plate and renders it clearly legible from a distance of fifty (50) feet to the rear.

c. Any tail lamps together with any separate lamp for illuminating the rear registration plate shall be wired so that they are lighted whenever the headlamps are lighted.

d. In addition to the tail lamps specified above, every motor vehicle, trailer, semi-trailer, and pole trailer, and any other motor vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one tail lamp mounted on the rear, which, when lighted shall emit a red light plainly visible from a distance of five hundred (500) feet to the rear. In the case of a train of vehicles only the tail lamps on the rearmost vehicle need actually be seen from the distance specified.

(3) STOP LAMPS: All motor vehicles shall be equipped with stop lamps automatically controlled by braking action.

(4) PARKING LAMPS: All motor vehicles, except motorcycles, shall be equipped with parking lamps which shall be lighted whenever a motor vehicle is parked or stopped upon a roadway or shoulder, whether attended or unattended, during the hours between a half-hour after sunset and a half-hour before sunrise or when there is not sufficient light to render clearly discernible persons, objects or motor vehicles on the roadway at a distance of five hundred (500) feet upon such roadway. Such parking lamps shall meet the following requirements:

a. at least one lamp shall display a white or amber light visible from a distance of five hundred (500) feet to the front of the motor vehicle; and

b. the same lamp or at least one other lamp shall display a red light visible from a distance of five hundred (500) feet to the rear of the motor vehicle.

c. the parking lamps lighted as required, shall be those nearest to passing traffic.

d. Any lighted headlamps upon a parked motor vehicle shall be dimmed.

(5) BRAKES: Every motor vehicle shall be equipped with brakes adequate to control the movement of and to stop and hold such motor vehicle.

(6) PARKING BRAKE: Every motor vehicle shall be equipped with a parking brake, except motorcycles.

(7) HORN: Every motor vehicle shall be equipped with a horn.

(8) WINDOWS UNOBSTRUCTED WIPERS: No person shall drive any motor vehicle with any sign or other non-transparent material upon the windshield, side wings, side or rear windows of such motor vehicle which obstruct the driver's view, other than a paper or certificate required to be so displayed by law. The windshield on every motor vehicle shall be equipped with a wiper device for cleaning rain, snow, or other obstructions from the windshield.

(9) MIRRORS: Every motor vehicle shall be equipped with a mirror reflecting to the driver a view of the roadway for a distance of at least two hundred (200) feet to the rear of such motor vehicle.

C. All equipment required by this section shall be in good working condition.

D. Any person violating any provision of this section is guilty of a Class C offense.

§6-1-27. Motor Vehicles Without Required Equipment or In Unsafe Condition.

A. No person shall drive or move on any roadway within the Zuni Reservation any motor vehicle, trailer, semi-trailer or pole trailer or any combination thereof unless the required

equipment specified in Section 6-1-25 is in good working order and adjustment, and the motor vehicle is in safe mechanical condition.

B. Any person who violates this section is guilty of a Class C offense.

§6-1-28. Speed Limits.

A. Speed limits on any roadway shall be set by the Zuni Tribal Council and posted at such places on the Reservation as deemed necessary by the Zuni Tribal Council.

B. In any area of the Reservation where the speed limit is not posted and where no special hazard exists, the following speeds shall not be exceeded:

(1) Residential areas 20 miles per hour

(2) Paved roadway 55 miles per hour

(3) School Zone 15 miles per hour

C. The speed limits set forth above are maximum speeds and do not relieve the driver from the duty to decrease speed when any special hazard exists or the duty of all persons to use due care under the circumstances.

D. It shall be a Class C offense to drive in excess of posted or legally established speed limits.

§6-1-29. Minimum Speed Regulation; Slow Moving Motor Vehicle Identification.

A. No person shall drive a motor vehicle at so slowly that the normal and reasonable movement of traffic is impeded except when reduced speed is necessary for safe operation of a motor vehicle or required by law.

B. "Slow-moving motor vehicle" means any motor vehicle which is ordinarily moved, operated or driven at a speed less than twenty-five (25) miles an hour on a paved roadway where the speed limit is 55 mph.

C. Each slow-moving motor vehicle moved, operated or driven on a roadway, which is open for vehicular travel, shall display a slow-moving motor vehicle emblem. This emblem shall either be a fluorescent yellow-orange triangle or flashing amber light.

D. The emblem shall be mounted on the center or rear of each slow-moving motor vehicle. The emblem shall be positioned so as to be entirely visible from a distance of five hundred (500) feet or more, day or night. The emblem shall be kept clean and free from any material which might obscure its visibility.

E. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-30. Lamp or Flag On Projecting Load.

A. Whenever the load upon any motor vehicle extends to the rear four feet or more beyond the bed or body of such motor vehicle there shall be displayed at the extreme rear end of the load, a red light or lantern plainly visible from a distance of at least five hundred (500) feet from the sides and rear of the motor vehicle, during hours of darkness or other times when light conditions require the use of head lamps. The red light or lantern required under this section shall be in addition to the red rear lamp required upon every motor vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than twelve (12) inches square and so hung that the entire area is visible to the driver of a motor vehicle approaching from the rear.

B. If any part of a motor vehicle, or any load thereon, or any mechanical device, whether a temporary or permanent part of the motor vehicle, extends beyond the front bumpers thereof the extreme front corners of such projection shall be indicated by amber lights or lanterns visible from a distance of at least five hundred (500) feet from the sides and front of the motor vehicle.

C. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-31. Pedestrians; Soliciting Rides or Business.

A. Every pedestrian crossing a roadway at any point shall have the right of way to all motor vehicles on the roadway.

B. Notwithstanding the provisions of sub-section A herein, every pedestrian shall exercise due care to avoid colliding with any motor vehicle upon any roadway and shall exercise proper precaution upon crossing or entering a roadway.

C. No person shall stand in a roadway for the purpose of soliciting a ride, employment or business from the occupant of any motor vehicle.

D. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-32. Illegal Parking.

A. No person shall park a motor vehicle upon a roadway when it is practical to park the motor vehicle off the roadway. If parking off the roadway is not practical, the motor vehicle must be parked such that a clear and unobstructed width of at least twenty (20) feet of the roadway opposite such standing motor vehicle shall be left for the free passage of other motor vehicles and it is clearly visible from the roadway from a distance of two hundred (200) feet in each direction upon the roadway.

B. This section shall not apply to any motor vehicle which is disabled while traveling on the roadway and where it is impossible to avoid stopping and temporarily leaving the motor vehicle in such a position.

C. Except when necessary to avoid a collision with other traffic or to comply with the directions of a police officer or traffic control sign, no person shall park:

- (1) On a sidewalk;

- (2) Blocking of a public or private driveway;
- (3) Within an intersection;
- (4) Within five feet of a fire hydrant;
- (5) On a crosswalk;
- (6) Within twenty feet of a crosswalk at an intersection;
- (7) Alongside or opposite any street excavation or obstruction when such would obstruct traffic;
- (8) On the roadway side of any motor vehicle stopped or parked at the edge of curb of a street;
- (9) Upon any bridge or other elevated structure upon a road;
- (10) At any place where official signs prohibit parking.
- (11) At any place designated for handicapped parking, unless the motor vehicle displays the appropriate handicapped symbol.

D. Violation of any of the provisions of this section shall be punished by a maximum fee of twenty-five dollars for each violation.

§6-1-33. Removal of Illegally Stopped, Parked or Wrecked Motor Vehicles.

A. Whenever any Zuni Tribal Police officer finds a motor vehicle unattended upon any roadway and such a motor vehicle constitutes an obstruction to traffic, such officer is authorized to provide for the removal of such motor vehicle, and the owner thereof shall be liable for all costs of removal.

B. Whenever any Zuni Tribal Police officer finds a motor vehicle parked for longer than twenty-four (24) hours upon any roadway, such officer is authorized to provide for the removal of such motor vehicle, and the owner thereof shall be liable for all costs of removal.

§6-1-34. Penalties.

Any person cited for the offenses set forth below, and provided that person has not been convicted of any of the set forth offenses within the preceding six months, in lieu of a court determination on the merits, may pay directly to the Clerk of the Tribal Court within five days of the offense charged, the following penalties in addition to court costs of five dollars:

Speeding	\$35.00
<i>(Only including 15 mph above the speed limit and does not include school zone offenses)</i>	
Careless Driving	50.00
Failure to Stop at Stop Sign	25.00
Failure to Yield Right of Way	25.00

Improper Passing or Turning	25.00
No Operator's License	25.00
Improper Parking	15.00
No Insurance*	25.00
Failure to Wear Seatbelts*	25.00
Failure to Use Child Restraint Device+	25.00

**** May be allowed to attend traffic school in lieu of a fine on first offense. + Shall also attend traffic school in addition to fine.***

§6-1-35. Evidence of Registration and Insurance; Display of Registration Plate and Sticker.

A. All motor vehicles that are operated upon any roadway must display a valid registration plate and sticker from the jurisdiction of registration of the motor vehicle. In addition every operator of a motor vehicle upon a roadway must carry evidence of registration and proof of insurance from the jurisdiction of registration, which shall be exhibited upon demand by any police office.

B. Every driver of a motor vehicle shall carry evidence of insurance in the amounts required by the State issuing the motor vehicle's Certificate of Registration.

C. Any person who violates this section is guilty of a Class C offense.

§6-1-36. Limitation on Operating a Motor Vehicle in Reverse.

A. The driver of a motor vehicle shall not back or operate it in reverse gear unless the movement can be made with reasonable safety and without interfering with other traffic.

B. Any person who violates this section is guilty of a Class C offense.

§6-1-37. One-Way Street.

A. No person shall drive a motor vehicle on or into a street designated and posted for one-way traffic other than in the direction so designated.

B. Any person who violates this section is guilty of a Class C offense.

§6-1-38. Application of Traffic Code.

A. The penalties established for violations of the Zuni Traffic Code shall apply only to Indians as defined by federal law.

B. Classes of offenses stated herein are pursuant to the Zuni Criminal Code Sections 4-3-2 through 4-3-6.

§6-1-39. Mufflers; Prevention of Noise; Emission Control Devices.

A. Every motor vehicle while being operated shall be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise. No person

shall use a muffler cutout, bypass or similar device while operating a motor vehicle on a roadway.

B. The muffler, emission control equipment or device, engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

C. Every registered gasoline-fueled motor vehicle manufactured or assembled, commencing with the 1968 models, shall at all times be equipped and maintained in good working order with the factory-installed devices and equipment or their replacements designed to prevent, reduce or control exhaust emissions or air pollution.

D. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-40. Starting Parked Motor Vehicle.

A. No person shall move a motor vehicle, which is stopped, standing or parked unless and until such movement can be made with reasonable safety.

B. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-41. Operation of Motor Vehicles on Approach of Authorized Emergency Motor Vehicles.

A. Upon the approach of an authorized emergency motor vehicle with either flashing lights or emitting an audible signal by siren, whistle or bell, the driver of every other motor vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position, until the authorized emergency motor vehicle has passed, except when otherwise directed by a police officer.

B. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-42. Obstruction to Driver's View or Driving Mechanism.

A. No person shall drive a motor vehicle so loaded with objects or persons that the driver's view is obstructed or the driver's safe and proper operation and control of the motor vehicle is impaired.

B. No passenger in a motor vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with the driver's safe operation and control of the motor vehicle. No more than three persons, including the driver, shall ride in the front seat.

C. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-43. Putting Trash or Other Materials on Roadway Prohibited.

A. No person shall throw or deposit upon any roadway or the area adjacent thereto, any glass bottle, glass, nails, tacks, wire, cans, trash or any other material likely to injure any person, animal or motor vehicle upon such road.

B. Any person who drops, or permits to be dropped or thrown, upon any roadway or area adjacent thereto, trash or any destruction injurious material shall immediately remove it or cause it to be removed.

C. Any person removing a wrecked or damaged motor vehicle from a roadway shall remove any glass or other injurious material dropped upon the roadway or area adjacent thereto.

D. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-44. Improper Opening of Doors.

It is a Class C offense for a person to:

A. open the door of a motor vehicle on the side nearest moving traffic unless:

(1) it is reasonably safe to do so; and

(2) the door can be opened without interfering with the movement of traffic;

or

B. leave a door of a motor vehicle open on the side of the motor vehicle near moving traffic for a period of time longer than necessary to load or unload passengers.

§6-1-45. Mandatory Use of Seatbelts.

A. In all motor vehicles having a gross weight of ten thousand (10,000) pounds or less and manufactured with safety belts in compliance with Federal Motor Vehicle Safety. Standard Number 208, all occupants shall have a safety belt properly fastened about his body at all times when the motor vehicle is in motion on any roadway.

B. Section A shall not apply to an occupant of such a motor vehicle who possesses a written statement from a licensed physician that such person is unable for medical reasons to wear a safety belt.

C. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-46. Child Passenger Restraint.

A. No person shall operate a motor vehicle unless each passenger under eleven (11) years of age is properly secured in a child passenger restraint device or by a safety belt, unless all seating positions equipped with safety belts are occupied, as follows:

(1) Children less than one year of age shall be properly secured in a child passenger restraint device which meets the standards prescribed in 49 CFR 571.213;

(2) Children one year of age and older but less than five years of age shall be properly secured in a child passenger restraint device which meets the standards prescribed in 49 CFR 571.213 or in the rear seat by a safety belt provided in the motor vehicle; and

(3) Children five years of age and older shall be secured by a safety belt provided in the motor vehicle in either the front seat or rear seat.

B. Each person operating a vehicle who violates this section is guilty of a Class C offense.

§6-1-47. Riding on Motorcycles.

A. A person operating a motorcycle shall ride only upon a permanent and regular seat attached thereto, shall have his feet upon the footrests provided on the motorcycle and shall not carry any other person thereon unless it is designed to carry more than one person. If a motorcycle is designed to carry more than one person, the passenger may ride upon the permanent seat if designed for two persons or upon another seat firmly attached to the rear or side of the motorcycle. The passenger shall have his feet upon the footrests attached for passenger use.

B. Any passenger riding on a motorcycle contrary to Section 6-1-42(A), above shall be deemed in violation of this section in addition to the driver of the motorcycle.

C. Any person operating a motorcycle not having a fixed windshield, shall wear an eye protective device which may be a face shield attached to a safety helmet, goggles or safety eyeglasses.

D. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-48. Mandatory Use of Protective Helmets.

A. No person shall operate or ride as a passenger on a motorcycle unless that person is wearing a safety helmet, which is securely fastened on his head in a normal manner. No dealer or person who leases or rents motorcycles shall lease or rent a motorcycle to a person unless that person has a valid driver's license and possesses the safety equipment specified herein. No person shall carry any passenger on any motorcycle unless the passenger is wearing a securely fastened safety helmet.

B. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-49. Bicycles.

A. Every bicycle operated from one-half hour after sunset to one-half hour before sunrise shall be equipped with proper reflectors, including wheel reflectors and operational lighting equipment as specified in Section 6-1-52, below.

B. No stereo headphones are to be worn while operating a bicycle on a roadway.

C. All persons operating a bicycle on roadways shall obey traffic laws and regulations pertaining to motor vehicles unless a specific provision of this section provides to the contrary.

D. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-50. Riding on Bicycles.

- A. A person riding a bicycle shall not ride other than upon a permanent seat attached thereto.
- B. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.
- C. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-51. Riding on Roadways and Bicycle Paths.

- A. Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing motor vehicle or one proceeding in the same direction.
- B. Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.
- C. Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.
- D. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-52. Lamps and Other Equipment on Bicycles.

- A. Every bicycle operated from one-half hour after sunset to one-half hour before sunrise, shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred (500) feet to the front and with a red reflector on the rear which shall be visible from three hundred feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to the red reflector.
- B. Every bicycle shall be equipped with brakes in good working order.
- C. Any person who violates any provision of this section is guilty of a Class C offense.

§6-1-53. Clinging to Motor Vehicles.

- A. No person riding upon any bicycle, coaster, roller skates, sled or toy motor vehicle shall attach the same or himself to any motor vehicle upon a roadway.
- B. Any person who violates any provision of this section is guilty of a Class C offense.

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TITLE VII. ZUNI GAME AND FISH CODE

CHAPTER 1. GENERAL

§7-1-1. Statement of Policy.

- (1) It is the intent and purpose of this Game and Fish Code to:
 - (a) provide an orderly system for the control and regulation of hunting and fishing on the reservation;
 - (b) provide a means to promote the conservation and management of wildlife resources on the reservation;
 - (d) provide a means to control and regulate other outdoor recreational activities on the reservation.
- (2) All matters relating to the conservation, regulation, control and management of the wildlife resources of the Zuni Reservation are subject to the jurisdiction of the Zuni Tribe.
- (3) It is recognized that members of the Zuni Tribe have a preferred right and interest in and to the wildlife resources of the reservation and that the Tribe has a legitimate right to establish differing rules and standards to govern the actions of members and non-members of the Tribe on the subject of wildlife regulation.
- (4) The Tribal Council shall have the authority to adopt annual proclamations or other regulations for the implementation of the policies of this Game and Fish Code and to alter or amend such proclamations and regulations as conditions indicate.
- (5) All wildlife now or hereafter found within the Zuni Reservation, not held by private ownership lawfully acquired, are hereby declared to be the property of the Zuni Tribe and no right, title, interest or property therein can be acquired or transferred or possession thereof had or maintained except as expressly provided herein.

§7-1-2. Definitions.

- (1) "All-terrain vehicle" means any motorized vehicle designed for or capable of travel over unimproved terrain.
- (2) "Aquatic wildlife" means any species of fish, crustaceans, aquatic insects, or amphibians.
- (3) "Bag limit" means the maximum number of wildlife, which may lawfully be taken by anyone in one day.
- (4) "Big game animals" means all species of deer, elk, moose, antelope, bighorn sheep, American pronghorn, bear, and mountain lion.
- (5) "Carcass" means the dead body of any animal or parts of it.

(6) "Certificate of Registration" means a document granting authority to engage in activities not covered by a license, permit or tag issued under this Code or any proclamation of the Tribal Council.

(7) "Closed season" means that period of time during which the taking of wildlife is prohibited.

(8) "Code" means this Zuni Game and Fish Code.

(9) "Department" means the Zuni Game and Fish Department.

(10) "Director" means the Director of the Zuni Game and Fish Department.

(11) "Firearm" means pistols, revolvers, rifles, shotguns and any device that is capable of being used as a weapon because it expels a projectile by some means of force.

(12) "Fishing" means to take aquatic wildlife by any means. families:

(13) "Game bird" includes all members of the following families: Anatidae (Ducks and Geese) Rallidae (Rails, Gallinules and Coots) Scolopacidae (Snipes, Sandpipers and Curlews) Tetraonidae (Grouse, Ptarmigan) Phasianidae (Quail, Partridge and Pheasant) Meleagrididae (Turkeys except domestic strains of turkey) Columbidae (Pigeons and Doves except domestic strains of pigeons) Gruidae (Cranes) Charadriidae (Plovers, Turnstone and Surfbirds) Recurvirostridae (Avocete and Stilts) Phalaropedidae (Phalaropes)

(14) "Game Fish" means all species of trout, catfish, croppie, perch, bass, pike, sunfish, and walleye.

(15) "Hunting" means to take any bird or animal by any means.

(16) "License" means the primary document granting authority to engage in activities covered by this Code.

(17) "Non-Tribal member" means all persons not enrolled members of the Zuni Tribe.

(18) "Officer" means an officer of the Zuni Game and Fish Department or other law enforcement officer of the Tribe.

(19) "Open season" means that period of time during which the taking of wildlife by legal means is permitted.

(20) "Permit" means a secondary document including stamps, requiring a license as a prerequisite to its issuance, which grants authority to engage in certain specified activities under this Code or any proclamation of the Tribal Council.

(21) "Person" means an individual, individual association, partnership or corporation, or any agent of the foregoing.

(22) "Possession limit" means the maximum number of wildlife, which may be possessed by anyone person at any one time.

(23) "Proclamation" includes the rules and regulations of the Tribal Council adopted and published under the provisions of this Code.

(24) "Protected species" shall include such species as the Game and Fish Department shall designate and, unless altered by regulation or proclamation, shall include all species of bullfrogs, waterdogs and Zuni suckers.

(25) "Ranger" shall mean an officer of the Zuni Game and Fish Department.

(26) "Recreational vehicle" means any all-terrain vehicle engaged in off-highway recreational use.

(27) "Reservation" includes all lands and waters within the exterior boundaries of the Zuni Reservation or other lands or waters owned by or for the benefit of the Zuni Tribe.

(28) "Sell" means offer or possess for sale, barter, exchange or trade, or the act of selling, bartering, exchanging or trading.

(29) "Small game animals" means all species of rabbits, squirrels, bobcats and foxes.

(30) "Tag" means a card, label or other identification device issued for attachment to the carcass of any wildlife.

(31) "Take" means to fish, angle, hunt, pursue, catch, capture, seine, trap, kill or possess any wildlife or any attempt to commit any of these acts.

(32) "Tribal Member" or "Member of the Tribe" means any enrolled member of the Zuni Tribe.

(33) "Tribe" means the Zuni Tribe.

(34) "Wildlife" means any form of animal life generally living wild in a state of nature, including all wild mammals, birds, fish, reptiles, and amphibians and their nests, eggs and spawn.

CHAPTER 2. THE ZUNI GAME AND FISH DEPARTMENT

§7-2-1. Zuni Game and Fish Department.

(1) The primary responsibility for enforcing the provisions of this Game and Fish Code shall be on the Zuni Game and Fish Department.

(2) The administrative organization of the Game and Fish Department shall be established and approved by the Tribal Council, and the director of the Department shall report to and be accountable to the Governor and Tribal Council.

§7-2-2. Rangers of the Zuni Game and Fish Department.

(1) Rangers of the Department shall meet such requirements as to physical characteristics and training as shall be established by the Tribal Council or the Director.

(2) The Director may appoint temporary rangers to aid the Department in times of unusual need.

(3) Rangers of the Department shall have the "powers and authority of police officers for purposes of enforcing the provisions of this Code and any proclamations or other regulations issued hereunder.

(4) Rangers of the Department shall have authority to make arrests, with or without a warrant, to make searches and seizures either pursuant to a warrant or incident to arrest, to issue citations for violations of this Code and to otherwise enforce the provisions of this Code and any proclamations or regulations issued hereunder.

CHAPTER 3. PROCLAMATIONS AND REGULATIONS

§7-3-1. Proclamations.

(1) Annually or at such other specified periods as the Tribal Council shall direct, the Tribal Council shall adopt a Game and Fish Proclamation.

(2) The Director of the Game and Fish Department shall purpose a proclamation to the Tribal Council which, when adopted by the Tribal Council either with or without amendments, shall have the force of law on the Zuni Reservation.

(3) The proclamation shall include the following:

(a) Fix seasons and shorten, extend or close seasons on any species of wildlife in any specific locality or localities, or in the entire Reservation, when it shall find, after investigation, that such action is necessary either to assure maintenance of an adequate supply thereof, to regulate taking, or to effectuate proper wildlife management and control.

(b) Close or open lakes, streams and refuges, specified localities or parts thereof, to angling, trapping or hunting and to regulate and prescribe the means by which wildlife may be taken as in its judgment may be best to perpetuate, restore, increase or control any species of wildlife and assure an adequate supply thereof, and to regulate the transportation and storage of all wildlife or parts thereof within the boundaries of the Reservation and the shipment or transportation off the Reservation.

(c) Establish or change bag limits and possession limits.

(d) Establish and change territorial limits for the taking of all species of wildlife.

(e) Prescribe the manner and the means of taking or transportation of any species of wildlife including, but not limited to, the prescribing of type or kinds of bait, lures, tackle, equipment, traps, firearms and weapons, tagging of game or fish or parts therefore, or any other means or device for taking such wildlife.

(f) Designate areas for hunting with bow and arrow or other specified weapons and the season therefore.

(g) Establish refuges or sanctuaries for game, game birds, fish or fur-bearing animals. When private property is to be included within a refuge, written consent of the owner

must first be obtained. All boundary lines shall be posted at the usual place of ingress with signs bearing the title of the Department.

(h) Establish methods for checking hunters, fishermen or trappers into and out of designated areas, prescribe safety and fire control measures and other regulations as may be deemed necessary in the interest of range, game, fish, or fur-bearing animal management, and the safety and welfare of hunters, trappers, fishermen, landowners and the Tribe.

(i) Establish fees for licenses, permits, tags and special hunting seasons.

(j) Designate parts of streams or ponds in which only children twelve (12) years of age and under may fish.

(k) Establish rules and regulations governing the operation of boats upon waters located within the exterior boundaries of the Reservation. Said rules and regulations shall be in conformity with the established Rules and Regulations of the United States Coast Guard, where applicable.

(l) Establish rules and regulations governing the operation of all-terrain and recreational vehicles on Tribal lands.

§7-3-2. Publication of Proclamation.

The Proclamation adopted by the Tribal Council shall, before its effective date, be published at least once in a newspaper of general circulation on the Reservation and shall be posted in at least three public places on the Reservation.

§7-3-3. Additional Regulations.

The Tribal Council may adopt additional regulations of either temporary or permanent application governing the dates, places, means, or manners of taking wildlife or any limitations thereon and such regulations shall, when published in the manner provided for proclamations, have the force of law on the Reservation.

CHAPTER 4. LICENSES, TAGS AND PERMITS

§7-4-1. Hunting License Requirement Members of the Zuni Tribe.

(1) Members of the Zuni Tribe shall be required to have valid Zuni license in their possession to hunt the following: game animals--bighorn sheep, elk, deer, antelope, and bear; game birds, turkey, waterfowl, quail, partridges, pheasant, pigeon, dove, grouse, and ptarmigan.

(2) Members of the Zuni Tribe who wish to obtain wildlife for any religious group must first obtain a religious hunting permit specifying the type of wildlife which is authorized to be taken. No such permit shall be issued to any person who cannot demonstrate either membership in or a legitimate connection with such religious group. Such permits shall be subject to the approval and regulation of the Department as to dates, places, limits and types of hunting permitted.

(3) Members of the Zuni Tribe may take any kind of wildlife not subject to any license requirement or limitation by proclamation or regulation, at any time and without a license.

§7-4-2. Hunting License Requirement - Non-Members of the Zuni Tribe.

All non-members of the Zuni Tribe, while hunting any type of wildlife on the Reservation, are required to have in their possession a Zuni hunting license appropriate to the type of hunting involved. A valid New Mexico State license is recommended but not required.

§7-4-3. Fishing License Requirement.

All persons, except members of the Zuni Tribe who have not yet reached their 14th birthday, are required to have in their possession a valid Zuni fishing license while fishing on the Reservation.

§7-4-4. License Categories.

The Tribal Council shall, by resolution, establish categories of licenses for hunting and fishing on the Zuni Reservation and establish the fees to be charged for such licenses. The fees charged to non-members of the Zuni Tribe may, but need not, be different from those charged to members of the Tribe.

§7-4-5. Permits and Tags.

(1) The Tribal Council may, by resolution or proclamation, establish special permit requirements for the taking of certain species of wildlife in designated areas and/or at designated times, and no wildlife of the designated type may be taken under the specified circumstances except by persons possessing a valid permit therefore.

(2) The Tribal Council may, by resolution or proclamation, establish tagging requirements for specified types of game and no game of the specified types may be taken except by complying with the tagging requirements.

(3) It shall be a condition precedent to the obtaining of any special permits or tags, that the person receiving such possess a valid Zuni hunting or fishing license appropriate to the activity involved. The Tribal Council may, but need not, make an exception in the case of religious hunting permits.

§7-4-6. Sale of Licenses, Permits and Tags.

(1) The Tribal Council shall direct the manner by which licenses, permits, and tags are sold.

(2) The Department shall administer the sale of licenses, permits and tags and may appoint license agents authorized to sell licenses, permits and tags.

§7-4-7. Hunter Safety Required.

No person under age 14 shall be allowed to purchase a hunting license unless he has completed an approved hunter safety training course.

CHAPTER 5. OFFENSES, PENALTIES AND PROCEDURES

§7-5-1. Penalties and Procedures.

(1) Violation of any provision of this Game and Fish Code or any regulation or proclamation issued there under by the Tribal Council shall, unless otherwise designated, be a Class B offense and may, in addition to any other prescribed penalties, be punishable by revocation of fishing and hunting or other licenses and confiscation and forfeiture of equipment. The provisions for penalties herein shall apply to all persons, both members and non-members of the Tribe alike, unless otherwise provided herein.

(2) At the time an arrest is made and/or citation issued for violation of this Code, the arresting officer shall confiscate any fishing equipment, rifles, guns or other fishing or hunting equipment or paraphernalia as reasonably appears to have been involved in the commission of the violation for which the arrest was made and shall give the person from whom such things are taken an itemized receipt for all such confiscated items. The court, when hearing the case concerning the alleged violation, may, in addition to any other penalty imposed upon a finding of guilt, order the forfeiture to the Department of all or part of the confiscated items.

(3) Not less than once each year, the Director or his designated representative shall conduct a public sale of all confiscated items not appropriated for the official use of the Department. Such sale shall be by auction held after not less than one week's notice to the general public, and the proceed there from will be disposed of in the manner specified by the Tribal Council.

(4) In cases of violations of this Code or any regulation or proclamation issued hereunder in which the person alleged to have committed the violation resides within the territorial jurisdiction of the Tribe, the accused person shall not be taken into custody if he voluntarily signs a promise, printed on the citation issued for the offense, that he will appear before the Tribal Court within five (5) days, and if, in the judgment of the officer involved, no arrest is necessary to protect the peace and safety of the Reservation.

(5) The Tribal Court may adopt a schedule of fines to be imposed for first violations of this Code.

§7-5-2. Enforcement.

Rangers of the Game and Fish Department and other law enforcement officers of the Tribe are authorized to enforce the provisions of this Code and any regulations and proclamations issued hereunder.

§7-5-3. Offenses.

The following are declared to be offenses under this Code:

(1) Spotlight: It is unlawful for any person or group of persons to throw or cast rays of light from a spotlight or other artificial light into any field, forest or prairie wherein big game animals may be reasonably be excepted to be, while having in their possession or under their control or in the possession of another nearby, a firearm or other implement whereby any big game animal could be killed with the aid of such artificial light. Provided, however, that all officers of the Zuni Game and Fish Department, while in lawful performance of their duties, shall be exempt from this rule.

(2) Killing or Possession a Fawn or Doe: It is unlawful for any person or persons to kill or knowingly have in his or their possession a fawn or doe deer or antelope at any time unless so authorized by the Zuni Game and Fish Department.

(3) Shooting Upon a Lake: It is unlawful for any person to shoot upon or over any lake on the Zuni Reservation using any firearm other than a shotgun.

(4) Legal Guns and Bows: It is unlawful to hunt the following with other than the specified weapon:

(a) Big game:

(i) shotguns of 28 gauge or larger firing a single slug.

(ii) any bow at least 40 pounds draw with which the user can cast a hunting arrow at least 130 yards. Arrows must have broad head points with sharpened, steel cutting edges. Crossbows are illegal.

(iii) muzzle loading rifles of at least 40 caliber.

(iv) 357 magnum, 41 magnum, and 44 magnum handguns, using magnum ammunition with soft-nosed or hollow-pointed bullets.

(v) center-fire rifles or center-fire handguns chambered for a center-fired rifle cartridge. However, no fully automatic firearm may be used. All bullets must be soft-nosed or hollow-pointed

(b) Turkey - rifles and bows as are legal for big game as well as all shotguns fired from the shoulder.

(c) Waterfowl - all shotguns fired from the shoulder.

(5) Carrying or Handling Firearms While Under the Influence of Alcohol: It is unlawful for any person to carry or use any firearm on the Zuni Reservation while under the influence of alcohol.

(6) Shooting From Road: It is unlawful for any person to shoot any type of firearm from or across any graded or maintained public road on the Zuni Reservation (road is defined as that area between six feet on each side of the pavement or the regular beaten path).

(7) Using a Dog to Take Game: It is unlawful for any person to use a dog in taking or attempting to take game animals unless approved by the Zuni Game and Fish Department.

(8) Using a Vehicle to Take Game: It is unlawful for any person to harass, or drive game animals or game birds by means of a motorized vehicle or to shoot from such vehicle at game animals or game birds.

(9) Damaging Property by Gunfire: It is unlawful for any person to knowingly damage by means of gunfire, any overhead wires, conductors, or poles supporting such wires or conductors or any other property of either the Tribe, Federal Government or any individual.

(10) Exceeding the Bag Limits and Possession: Any person who shoots or otherwise takes or possesses more than the allowed number of any big game animal or any game bird or species of fish shall be deemed guilty of an offense. Bag and possession limits will be established by regulation by the Zuni Game and Fish Department. All wildlife possessed in excess of these limits shall be seized and forfeited to the Zuni Tribe.

(11) Careless Use of a Firearm: It is unlawful for any person to carry, handle or use any firearm in such a manner as to carelessly endanger the life, limb or property of another.

(12) Hunting or Possessing Game Out of Season: It is unlawful for any person, except as authorized by the Zuni Game and Fish Department, to hunt, kill, wound or otherwise take, capture or have in his possession any big game animal, or any game bird as herein defined, when the season has not been declared open. Hunting seasons will be established by the Zuni Game and Fish Department.

(13) Hunting or Fishing Without Required Licenses, Permits or Tags. It is unlawful to hunt or fish without having first obtained all appropriate licenses, permits and tags and/or to hunt or fish without having such licenses, permits or tags on one's person.

(14) Hunting During Daylight Hours Only: No big game animals or game birds as herein defined, shall be taken, pursued, wounded or killed on the Zuni Reservation other than during daylight hours unless otherwise provided by the Zuni Game and Fish Department. Daylight hours shall be from 1/2 hour before sunrise until sunset.

(15) Hunting on Wildlife Refuges: It is unlawful for any person to knowingly or willfully hunt or otherwise take any game birds or game animals on any posted wildlife refuge or sanctuary within the boundaries of the Zuni Indian Reservation, unless otherwise authorized by the Zuni Game and Fish Department.

(16) Killing Or Taking Protected Species: It is unlawful for any person to hunt or otherwise take any bullfrog, waterdog, Zuni sucker, or other protected species, unless otherwise authorized by the Zuni Game and Fish Department.

(17) Shooting Fish: It is unlawful for any person to shoot or attempt to shoot with any type of firearm at any fish in the waters of the Zuni Reservation.

(18) Using Fish for Bait: It is unlawful for any person to use or attempt to use, dead or alive, any type of fish for bait in or on any body of water on the Zuni Reservation.

(19) Fishing out of Season: Unless otherwise provided by regulation Zuni Game and Fish Department, the fishing season will be open the entire year. If limited, fishing out of season will be an offense.

(20) Taking Fish With Hook and Line Only: It is unlawful to take or catch fish with other than a line and hook, except when authorized by the Zuni Game and Fish Department. Line and hook is defined as: (a) one line with no more than two hooks, (b) one line with one artificial lure, which may have attached more than one hook, or (c) one line with no more than two artificial flies.

(21) Fishing Derbies or Contests Prohibited: It is unlawful to hold fishing derbies or fishing contests on the Zuni Reservation without the authorization of the Zuni Game and Fish Department.

(22) Use of Nets, Trout Lines or Traps: It is unlawful for any person except those specifically authorized by the Zuni Game and Fish Department, to set or use any trap, net, trout line or other such devices to take any fish in waters on the Zuni Reservation. Such devices shall be subject to seizure and confiscation by the Zuni Game and Fish Department.

(23) Planting of Fish: It is unlawful for anyone to plant, place or attempt to plant or place any type of fish in any body of water on the Zuni Reservation without the authorization of the Zuni Game and Fish Department.

(24) Littering: It is unlawful for any person to deposit garbage, refuse, ashes, junk, glass, bottles, cans or any other form of litter or debris anywhere on the Zuni Reservation, except in containers or dumping grounds which are provided and designed for such use.

(25) Malicious Mischief: It is unlawful for any person to maliciously disturb, deface or destroy any private or public property, or cause such property to be disturbed, defaced or destroyed.

(26) Disobeying a Tribal Ranger. It is unlawful for any person to fail to obey a lawful order given by an authorized officer of the Zuni Game and Fish Department, while in the course of performing his duties.

(27) Loss of License or Permit: Any person, other than the issued party, using a lost license, permit or tag is guilty of an offense.

(28) Making a False Statement: It is unlawful for any person to knowingly swear or affirm to any false statement while applying for any type of hunting or fishing permit, license or tag.

(29) Allowing Fires to Spread: Any person who makes a campfire or other fire and negligently allows it to spread and do damage to any property shall be deemed guilty of an offense.

(30) Permit to Keep Wild Animals: It is unlawful for any person to retain any live big game animal without possessing a permit from the Game and Fish Department.

(31) Boat With Motor: It is unlawful for any person or persons to use a boat powered by a motor on any lake of the Zuni Reservation, except for electric motors, unless otherwise authorized by the Zuni Game and Fish Department.

(32) Required Boat Equipment: It is unlawful for any person or persons to operate or give permission to operate any vessel which does not contain one life preserver for every person on board, and approved lights, if the vessel is operated after dark.

(33) Importing Animals, Birds or Fish: It is unlawful to import any species of live animal, bird or fish onto the Zuni Reservation, except recognized domesticated animals or birds, without first obtaining permission from the Zuni Game and Fish Department.

(34) Impersonating a Ranger: It shall be unlawful for any unauthorized person to falsely represent himself to be a Ranger of the Zuni Game and Fish Department.

(35) Setting Traps Without a Permit: It shall be unlawful to set a trap or traps to capture, kill or attempt to capture or kill any animal on the Zuni Reservation without first procuring a trapping permit from the Zuni Game and Fish Department.

(36) Violations of a Proclamation: It shall be unlawful to commit any act declared to be unlawful by a proclamation or regulation of the Tribal Council or to knowingly violate the provisions of such proclamations or regulations.

(37) Fishing License Requirement: All persons, except members of the Zuni Tribe who have not yet reached their 12th birthday, are required to have in their possession a valid Zuni Fishing license while fishing on the Zuni Reservation.

(38) Hunter Safety Required: No person under age 16 shall be allowed to purchase a hunting license unless he has completed an approved Hunter Safety Training Course.

§7-5-4. Penalties

(1) Penalties: Violation of any provision of this Fish and Wildlife Code or any regulation or proclamation issued thereunder by the Tribal Council shall, unless otherwise designated, be a Class B offense and may, in addition to any other prescribed penalties, be punishable by revocation of fishing and hunting or other licenses and confiscation and forfeiture of equipment. The provisions for penalties herein shall apply to all persons, both members and non-members of the Tribe alike, unless otherwise provided herein.

(2) At the time an arrest is made and/or citation issued for violation of this code, the arresting officer shall confiscate any fishing equipment, rifles, guns or other fishing or hunting equipment or paraphernalia as reasonably appears to have been involved in the commission of the violation for which the arrest was made and shall give the person from whom such things are taken an itemized receipt for all such confiscated items. The court, when hearing the case concerning the alleged violation, may, in addition to any other penalty imposed upon finding of guilt, order the forfeiture to the Department of all or part of the confiscated items.

END OF TITLE VII. ZUNI GAME AND FISH CODE

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TITLE VIII. ZUNI EXCLUSION AND REMOVAL CODE

§8-1-1. Statement of Legislative Determination and Intent.

The Zuni Tribe by its Tribal Council hereby finds and determines that, pursuant to authority granted in Article VI of the Constitution, of the Tribe, it is necessary to provide a means whereby the Tribe can protect itself, its members, and other persons living on the Reservation, from people whose presence on the Reservation is harmful to, or threatens harm to, the peace, health, safety, morals and general welfare of the Tribe and its members. Such action is deemed necessary as a result of the Tribe's interest in maintaining the aforementioned threatened interests free from harm, to protect the cultural identity of the Tribe, and to protect those residents of the Reservation who may be imposed upon, harmed or otherwise disadvantaged. The procedures outlined herein are intended to provide procedural fairness to persons affected by these provisions while at the same time recognizing the need, in appropriate situations, to act immediately to remedy actual or threatened harms.

§8-1-2. Persons Subject to Exclusion and Removal.

All persons who are not members of the Tribe or who are not authorized by Federal law to be present on the Reservation may be excluded or removed from all or any portion of the Reservation as provided herein.

§8-1-3. Grounds for Exclusion and Removal.

A person subject to exclusion and removal as provided herein may be excluded and/or removed from the territory of the jurisdiction of the Tribe as defined in this Law and Order Code, upon anyone or more of the following grounds:

- (1) Hunting, fishing or trapping on the Reservation without authority from the Tribe or contrary to the rules and regulations of the Tribe governing such activities.
- (2) Trading or conducting business upon the Reservation in violation of Tribal regulations or regulations of the Secretary of the Interior.
- (3) Prospecting upon the Reservation without authority from the Tribe or the Secretary of the Interior.
- (4) Mining, cutting timber, grazing or other use, abuse or damage to Tribal property without authority from the Tribe or the Secretary of the Interior.
- (5) Exploring for or excavating upon items, sites or locations of historic, religious or scientific significance without authority from the Tribe or in violation of federal laws or regulations.
- (6) Being or traveling upon the Reservation while afflicted by a communicable or contagious disease.
- (7) Committing frauds, confidence games, or usury against Indian people residing on the Reservation, or inducing them to enter into grossly unfavorable contracts of any kind.
- (8) Repeated commission of criminal offenses.

(9) Interfering with or photographing Zuni Ceremonies or religious shrines without permission from the persons involved or the Tribe.

(10) Interfering with the official, political, governmental business or religious affairs of the Tribe.

(11) Doing or threatening to do any act upon the Reservation which seriously threatens the peace, health, safety, morals and general welfare of the Tribe, its members, or other persons living on the Reservation.

§8-1-4. Proceedings for Exclusion and Removal.

Upon complaint of any member of the Tribe, the Tribal Court may determine whether a person has committed any of the aforementioned acts constituting grounds for exclusion and removal and whether or not the removal and/or exclusion of such person is to be ordered. Such proceedings shall be conducted as provided herein below. An order of exclusion and/or removal may be entered by the Tribal Court.

§8-1-5. Emergency Exclusion and Removal Without Prior Hearing.

(1) Whenever the Tribal Court finds that there is an immediate need to order the exclusion and/or removal of a person from the Reservation and that the granting of notice and opportunity to be heard to such persons prior to making such order would cause a delay seriously detrimental to the interests of the Tribe or its members, the Tribal Court shall immediately order such exclusion and/or removal and provide the notice and opportunity for review of such decision as outlined below.

(2) Whenever the exclusion and/or removal of a person is ordered without a prior hearing as provided herein, the person shall be served with a notice of such action. Such notice shall state the nature and extent of the exclusion and/or removal so ordered, shall state the reasons why no prior hearing was held, shall inform the person that once he has complied with the order, he may immediately petition the Tribal Court for a hearing to reconsider the order, that he may be represented by counsel at such hearing and present evidence in his own defense, and shall inform him that his compliance with such order may be enforced by Tribal or government police officers. A copy of the order shall be served with the notice and such service may be accomplished by personal service or, if personal service is not reasonably possible, by mailing to the person by United States registered mail, return receipt requested, at his last known address.

(3) Upon receipt of a petition for a hearing as provided next above, the Tribal Court shall schedule a hearing to allow the person to present evidence. Such hearing shall be held within two weeks of the receipt of the petition, provided, however, that the order of exclusion and/or removal shall remain in force pending hearing and a decision thereon, except for purposes of attending a hearing.

(4) The Tribal Court shall, as a result of such hearing, either affirm, modify or rescind its previous order, and shall give the person notice of such decision in the same manner as provided for service of the notice above.

§8-1-6. Hearing on Exclusion and Removal in Non-Emergency Situations.

(1) In all other cases of exclusion and/or removal, the Clerk shall cause to be served a copy of the petition and a notice of hearing upon the person involved either by personal service, or if such service is not reasonably possible, by Registered mail return receipt requested to the last known address of such person. Such notice shall contain the date and time of the hearing, which shall be not less than three days from the date of service, and shall further inform him that he may appear, with counsel if he desires, and present evidence in his own behalf.

(2) The hearing on a proposed exclusion and/or removal may be held at a regular session of the Tribal Court.

(3) The Tribal Court shall hear the evidence presented and shall, if appropriate, order the exclusion and/or removal of the person. If the person is not present at such hearing, or if a decision thereon is not rendered until after the hearing, appropriate notice shall be served on the person in the manner provided above, informing him of the action of the Tribal Court and such notice shall include a copy of any order of exclusion and/or removal, which affects such person.

§8-1-7. Review of Orders of Exclusion and Removal.

(1) The Appellate Court shall have exclusive authority to hear appeals from orders of exclusion and/or removal after hearing has been held thereon before the Tribal Court.

(2) The Tribal Appellate Court shall have authority to stay an order of exclusion and removal upon such conditions of security as it deems just only if all prior hearing remedies have been exhausted and only if no substantial interest of the Tribe, its members, or other residents of the Reservation will be harmed thereby.

(3) All orders of exclusion and removal shall remain in full force and effect during periods of hearing or review unless stayed as provided herein.

§8-1-8. Enforcement of Orders of Exclusion and Removal.

All law enforcement officers of the Tribe and the U.S. Government are hereby empowered to carry into effect any exclusion and/or removal order of the Tribal Court according to the terms of such order.

END OF TITLE VIII. ZUNI EXCLUSION AND REMOVAL CODE

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TITLE IX THE ZUNI'S CHILDREN'S CODE [Revised February 10, 2021, Resolution No. M70-2021-P011]

CHAPTER 1. GENERAL PROVISIONS

§ 9-1-1. Title

This Code is known as the Zuni Children's Code.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-1-2. Purpose, Construction and Severability

A. Purpose - It is the purpose of this Children's Code to:

1. Recognize that the young people are the Zuni Pueblo's most important resource and their welfare is paramount;
2. Secure for each child before the Court the care and guidance that is in the best interest of the child and consistent with the customs, cultural values, and laws of the Pueblo of Zuni;
3. Preserve and strengthen family ties and a child's cultural and spiritual identity to help the child become a productive and well-adjusted community member;
4. Protect the peace, safety and security of the Pueblo of Zuni and its community members;
5. Foster cooperative intergovernmental relations between the Pueblo of Zuni and the state of New Mexico and other states, tribes and other government entities, with regard to the welfare of children and families; and
6. Protect the rights of Zuni parents and the sovereign and traditional right of the Zuni Pueblo to determine the best interests of children and families.

B. Construction - This Code shall be liberally interpreted to fulfill its purpose.

C. Severability - If any part or application of this Code is held invalid, the remaining provisions or applications shall not be affected.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-1-3. Definitions

A. General

1. For purposes of this Code, the words and phrases defined shall have the meaning respectively attributed to them.

2. The use of "he" or "his" also means "she" or "her."
3. Singular includes plural

B. Specific Definitions

1. Abandon or Abandonment - The failure of a parent, guardian, or custodian to provide reasonable support or care for a child as determined by the Court. The failure to provide reasonable support or care for a period of six months shall be prima facie evidence of abandonment.

2. Abuse

a. The infliction or allowing of physical injury, impairment, or disfigurement;

b. The infliction or allowing of serious emotional damage that causes severe anxiety, depression, withdrawal, or extreme aggressive behavior, as diagnosed by a medical doctor or psychologist; or

c. An act which would constitute sexual abuse, sexual contact with a minor, or sexual exploitation under the laws of the Zuni Pueblo or the State of New Mexico.

3. Adoptive Parent - a person establishing or seeking to establish a permanent parent-child relationship with a child who is not the person's biological child.

4. Adult - A person eighteen years of age or older.

5. Advocate or Lay Counsel - A non-attorney who is authorized to practice before the Zuni Courts.

6. Case Plan - See "Service Plan."

7. Child - A person under eighteen years of age.

8. Child Care Institution - A facility licensed by the jurisdiction in which it is located for the care of a child. The term does not include a facility operated primarily for the detention of children who are determined to be delinquent or juvenile offenders.

9. Child Welfare Caseworker - A Social Services Department employee who reports to the Court and performs the duties under this Code for a minor-in-need-of-care.

10. Code - The Zuni Children's Code.

11. Court - The Pueblo of Zuni Children's Court, unless otherwise specified.

12. Court Appointed Special Advocate (CASA) - An advocate trained under the CASA Program and appointed by the Court on behalf of a child to provide the Court with independent information on a case.

13. Custodian - A person, other than a parent or guardian who exercises physical control, care or custody of a child, including an employee of a residential facility.

14. Day - For calculating time periods under this Code, the terms "day" or "days" shall include weekends and Court holidays if the specified time period is eleven days or more. If the specified time period is shorter than eleven days, intervening weekends and Court holidays shall not be included in the calculation. Except as otherwise stated, if the final day of a specified time period falls on a weekend or holiday, the final day shall be the next business day.

15. Delinquent Act - An act, which if committed by an adult, would be designated as a crime under the Zuni Criminal Code or the laws of the State of New Mexico. The term "delinquent act" shall also include the possession or consumption of alcohol by a minor..

16. Detention Facility - A locked facility in which a minor may be placed pursuant to this Code that physically restricts the minor's freedom of movement.

17. Extended Family Member - An adult who is a person's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, step-parent, god-parent, or who is otherwise considered a person's family member by Zuni clanship or custom.

18. Family - The parents, siblings, and others who live in a child's home and are considered by the child as a family member.

19. Foster Care - Out-of-home care provided for a child who is in the custody of the Social Services Department in a home, group home, or other facility licensed or approved by the Department, whether on or off the reservation.

20. Foster Parent - A person who is licensed or approved by the Zuni Social Services Department or other authorized licensed foster family agency to provide 24-hour care of children.

21. Guardian - A person other than the minor's parent who is lawfully responsible for the care and custody of that minor, the minor's estate, or both.

22. Guardian Ad Litem - An attorney, advocate, CASA, or other adult appointed by the Court for the protection of the child's interest to represent a child in a proceeding.

23. Indian - A person who is member or eligible to be a member of a federally recognized tribe, band, community, or native Alaska village, group or regional corporation as defined in 43 U.S.C. § 1601, et. seq.

24. ICWA - The federal Indian Child Welfare Act, 25 U.S.C. §§ 1901 - 1963.

25. Juvenile Offender - A person who commits a delinquent act prior to his or her eighteenth birthday, and includes a person who remains subject to the jurisdiction of the Court because of an act committed prior to age eighteen.

26. Legal Custody - A legal status created by a court that vests in a person the right and duty to support and care for a minor, subject to the rights and duties of the parent or guardian, unless otherwise authorized by the Court.

27. Mandated Reporter - A person who, pursuant to Section 9-2-4 and the Child Abuse and Neglect Reporting Act, is required to report knowledge or reasonable suspicion

of child abuse which is obtained while acting in a professional capacity or scope of employment.

28. Minor - A person under eighteen years of age.
29. Minor-In-Need-Of-Care - A minor who is:
 - a. Neglected by a parent, guardian, custodian, or other care-provider; or
 - b. Abused by a parent, guardian, custodian, other adult, or other care-provider.
30. Neglect - A condition in which a minor is:
 - a. Has been abandoned;
 - b. Has suffered or is likely to suffer abuse;
 - c. Has not been provided with food, clothing, shelter, medical care, education or supervision adequate for his or her needs; or
 - d. Has committed delinquent acts as a result of parental pressure, guidance approval, or lack of supervision.
31. Parent - A natural or adoptive parent, not including persons whose parental rights have been terminated by court order, and not including the alleged biological father whose paternity has not been established.
32. Permanency Planning - The hearing required under Section 9-9-1 to determine the future status of a minor.
33. Person - Includes any corporation, partnership, private or government entity, natural person or association of persons.
34. Reservation - The Zuni Indian Reservation.
35. Service Plan - The written plan for services, conditions and expectations for a minor-in-need-of-care. Also known as a case plan.
36. Shelter Care - A temporary home for a minor.
37. Sibling - An individual who is considered by tribal law to be a brother or sister.
38. Social Services Department - The Zuni Tribal Social Services Department. Also referred to as the "Department."
39. Status Offender - A minor who:
 - a. Does not comply with the requirements of the compulsory school attendance chapter of this Code;

b. Continually and habitually disobeys the reasonable and lawful demands of his parent, guardian or custodian and is beyond parental control: or

c. Has left the home of his parent, guardian or custodian without consent and remained away for at least 24 hours.

40. Tribe - The Zuni Tribe of the Zuni Indian Reservation, also known as the Zuni Pueblo.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

CHAPTER 2. STANDARDS FOR THE PROTECTION AND BENEFIT OF CHILDREN

§ 9-2-1. Best Interests of the Child

All actions and decisions made under the authority of this Code shall be implemented to serve the best interests of the child. In determining the best interests of the child the following principles govern:

A. A child's need for love, nurturing, protection, and stability. A child must have a safe and nurturing home environment offering emotional support and comfort; the basic needs of food, clothing and shelter; reasonable medical care and protection from danger, violence, or exposed to harmful conduct including drug or alcohol abuse.

B. A child's need for family. A child must have connection to loving family members for guidance and nurturing. Although not all children have the benefit of family care, nothing can replace the primary role of loving parents and family in a child's life.

C. A child's need for identity and development. A child must develop self-identity and awareness of his or her unique role within the larger community, including the child's cultural community. This is done by participation in cultural activities, speaking one's native language, and having opportunities and encouragement to pursue education and enrichment.

D. A child's need for happiness. A child cannot be happy unless his or her primary needs are met; but a child also needs opportunities for play and recreation, leisure time and other activities the child enjoys, and possession of toys and other personal items of importance to the child.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-2-2. Placement Priorities

A. Any placement under this Code shall be made for the best interests of the child. All placement decisions should support the child's affiliation with Pueblo or Indian culture and provide the least restrictive environment which meets the child's needs, and in the case of detention, assures the safety and protection of the public.

B. With the understanding that the prioritization must be interpreted with flexibility and recognizing that the best interests of the child are primary, the following order of priority shall guide all placements:

1. The child to remain with the child's family in the child's home under conditions and restrictions established by the Court;
2. Placement in the home of an extended family member residing on the reservation;
3. Placement in the home of an extended family member residing off the reservation;
4. Placement in a facility or home within the reservation which is licensed, certified, or approved by the Department; or
5. Placement in a facility or home outside the reservation which is licensed or certified by the Department, or licensed or certified for such placement by the state and approved by the Department.

C. The child shall be permitted to have appropriate involvement with family, tribal, and cultural activities.

D. Off-Reservation Agreements - Whenever a minor is placed in a home or facility outside the Reservation boundaries, the Court shall require the party receiving custody of the minor to sign an agreement consenting to the Court's jurisdiction and confirming that the minor will be returned upon order of the Court. Absent such a signed agreement, and whether or not the placement arises from a Court proceeding, any person or institution shall be deemed to have consented to the jurisdiction of the Children's Court and agreement to return such child by having taken placement under this Code.

E. Child Abuse Registry Check - The Department shall complete a check of in-state and out-of-state child abuse/neglect registries for any prospective foster, guardian, or adoptive parent and any other individual over the age of eighteen (18) residing in the home. The child abuse registry check shall cover all jurisdictions where the investigated person has lived in the immediate prior five years and is to be completed prior to licensure or approval for foster, guardianship, or adoptive placement of a child.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-2-3 Foster Care and Shelter Standards

A. Regulations - The Social Services Department, with the approval of the Tribal Council, shall adopt written regulations for the operation of a shelter care facility, foster care home, kinship guardian or adoptive home, licensed or approved by the Department. The regulations shall include standards for cleanliness, sanitation, safety, utilities, personnel, visiting privileges, occupancy limits, provisions for medical, dental and mental health care, and provisions for food, clothing and the possession of personal items.

B. Mandatory Standards for Treatment of Children - The Department shall enforce the following standards and develop regulations consistent with such standards for the treatment of minors in a shelter care facility, foster care home, kinship guardian or adoptive home:

1. A minor shall not be punished, ridiculed or [criticized] for expressing through speech, custom or dress the minor's Indian or tribal heritage.
2. Whenever possible, the minor shall be allowed to attend the school in which he is enrolled. If the circumstances do not permit the minor to attend his regular school, arrangements shall be made to permit the minor to continue his education.
3. A minor shall be allowed to attend family events and traditional ceremonies, provided that he is accompanied by a parent, guardian or custodian.
4. A minor shall not be punished by physical force, solitary confinement or deprivation of meals or family visits.
5. A minor shall perform reasonable work duties such as maintenance of his bed and personal property, but shall not be required to perform work duties commensurate with his age, physical, mental or emotional abilities.

C. Standards for Detention Facilities - The following standards shall apply to any placement in a detention facility:

1. A minor shall wear only the clothing supplied by the detention facility.
2. If the minor is unable to attend a local school, schoolwork and educational assistance at the minor's level of development shall be provided for the minor.
3. With prior Court order, a minor shall be allowed to attend the funeral and related activities of family or extended family members, or to attend traditional ceremonies, provided that he is accompanied by a parent, guardian or custodian, and returns immediately to the detention facility at the conclusion of the period set by the Court.
4. If there exists a reasonable belief that a minor may cause physical injury to himself or others, the minor shall be placed in a supervised holding cell and monitored on a prescribed schedule and referred for immediate treatment by medical authorities.
5. Subject to legitimate institutional regulations, a minor shall be allowed to wear his hair as he chooses.
6. Incoming and outgoing mail may be inspected for contraband but shall not be read.
7. A minor shall be given the opportunity to engage in physical exercise for at least one hour every day.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; Special Note: the version from which this was transcribed used the word "criticised" at Subsection-B(1), which has been modified to "[criticized]" above.)

§ 9-2-4. Duty to Report Abuse and Neglect

A. Basis of Report - Persons who have a reasonable cause to suspect that a minor has been abused or neglected shall report the abuse or neglect to the Social Services Department or Police Department.

B. Persons Required to Report (Mandated Reporter) - Those persons who are required to report suspected abuse or neglect are any physician, nurse, or other medical or mental health professional; principal, teacher or other school official; social worker; child care worker or other child care staff including foster parents, residential care or institutional personnel; counselor; peace officer; judge, attorney, other judicial officer and any other person required to report pursuant to federal, tribal or state law. This paragraph shall not be interpreted to override ethical rules defining the attorney-client privilege..

C. Other Persons Reporting - Any person may make a report of suspected abuse or neglect.

D. Anonymity - Those persons reporting, except those specified in Paragraph B, may remain anonymous if the Court so determines.

E. Immunity from Liability - All persons or agencies reporting in good faith abuse or neglect shall be immune from civil or criminal liability.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-2-5. Records Maintenance and Protection

A. Production of Records - A record of all hearings under this Code shall be made and preserved until the jurisdiction of the Court has ended. All Court and law enforcement records concerning a minor shall be kept separate from the records of adults.

B. Confidentiality - All records are confidential and shall not be open to inspection other than by Court personnel and the following persons, and subject to regulations adopted by the Court:

1. The minor and the minor's attorney;
2. The minor's parent, guardian or custodian, and such parent's, guardian's or custodian's attorney;
3. The juvenile probation officer or child welfare caseworker;
4. The prosecutor; and
5. Any other person granted permission by Court order.

C. Protection of Records - All records of a minor shall be sealed when the minor is no longer subject to the Court's jurisdiction, and thereafter, released only by Court order following notice to the parties and only if needed for a court proceeding concerning a serious criminal

charge or similar circumstance of compelling need. This paragraph shall not be construed to permit the release of information for other purposes, such as background checks conducted for employment, licensing or security clearances. Adoption records shall be released as allowed in Section 9-12-12.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also Hannaweeke v. Pueblo of Zuni, 19 SWITCA Rep. 12 (2008)(In the absence of a record, SWITCA may remand a case for further proceedings de novo in order to create the record); see also 11/20/1996 Administrative Order (In the Matter of Disposing of Court Records for the Deceased; Special Note: the current (2021) Children's Code seems to suggest that all records shall be kept indefinitely).)

§ 9-2-6. Confidentiality

Any record or information obtained as result of a proceeding covered by this Code and not otherwise covered by Section 9-2-5 are confidential and shall be made available only to a party and his representative, and the minor's parent, guardian or custodian, or to such other person the Court determines has valid reason to see such records.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also 11/20/1996 Administrative Order (In the Matter of Disposing of Court Records for the Deceased; Special Note: the current (2021) Children's Code seems to suggest that all records shall be kept indefinitely).)

§ 9-2-7. Confidentiality of Detention or Shelter

The Court may order that the place of detention or shelter care be kept confidential to protect the best interests of the minor.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-2-8. Fingerprints and Photographs

A. A minor may be fingerprinted or photographed without Court order only under the following circumstances:

1. If necessary for identification;
2. To compare to fingerprints found during an investigation, provided that a law enforcement officer has reasonable cause to believe the fingerprints are those of the minor; or
3. If there is reasonable cause to believe the minor has been subjected to abuse or neglect.

B. Copies of the fingerprints and photographs shall be immediately destroyed if the minor is not referred to the Court, unless needed for a criminal investigation.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also 11/20/1996 Administrative Order (In the Matter of Disposing of Court Records for the Deceased; Special Note: the current (2021) Children's Code seems to suggest that all records shall be kept indefinitely).)

CHAPTER 3. ZUNI SOCIAL SERVICES

§ 9-3-1. Authority and Responsibility

A. General Authority - The Zuni Social Services Department is the Tribal department authorized to license foster homes, conduct investigations of child abuse and neglect, provide services to families and children pursuant to funding conditions with the Bureau of Indian Affairs and other funding agencies, implement procedures and regulations, subject to Tribal Council approval, to carry out the provisions of this Code, and perform all duties delegated in this Code.

B. Cooperation and Grants - The Department is authorized to cooperate fully with any federal, state, tribal, public, or private agency in order to participate in any foster care, shelter care, treatment, or training program(s) and to receive grants-in-aid to carry out the purposes of this Code.

C. Management - The Department shall be managed by a director who shall have overall authority to manage the Department's budget, supervise all functions of the Department, recommend the hiring and termination of Department employees pursuant to Tribal personnel policies, and ensure that Department regulations and procedures are current and in effect. The director shall be appointed pursuant to Tribal personnel policies and possess a professional background in social work and child welfare services. The director shall report to the Tribal Administrator.

D. Oversight - For effective oversight and administration, the Department Director and Tribal Administrator shall have access to records and information which is protected from disclosure under this Code, provided such access complies with the standards of this Code.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-3-2. Delivery of Services

Zuni Social Services provides services to all children and families who are subject to the jurisdiction of the Children's Court. Such services shall include all duties and functions related to Title IVB, Title IVD and Title IVE programs or plans which are in effect or which may be implemented in the future.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-3-3. Indian Child Welfare Act Cases

A. ICWA Contact - The Department shall serve as the point of contact for the Tribe for service of ICWA notices issued by any court.

B. Monitoring and Intervention - The Department shall monitor and, in its discretion, intervene in proceedings in other jurisdictions for which it has received notice or knowledge involving children enrolled or eligible for enrollment in the Tribe.

C. Transfer of Jurisdiction - Subject to Tribal consultation under such conditions as the Tribe may establish, and the standards of this Code for the best interests of the child, the Department may petition the court of another jurisdiction to transfer a case to the Children's Court, subject to the Court's right of declination of such transfer, and the provisions of Section 9-4-7.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-3-4. Management Systems

The Department will adopt operating procedures, subject to the Tribal Council approval, and maintain in effect management systems which will do the following:

A. Develop, organize, implement, administer, and coordinate various services on the Zuni Reservation.

B. Provide delivery of quality services in accordance [with] Department Standard Operating Procedures.

C. Ensure that Department services and operations are in compliance with and updated to maintain compliance with the laws and established regulations of the Pueblo of Zuni, and as applicable, the federal and state government.

D. Coordinate services with Zuni Indian Health Services, Zuni Recovery Center, and other tribal, federal and/or state programs.

E. Provide prevention services to other providers such as Zuni Recovery Center, public schools, etc.

F. Monitor and evaluate Department programs on a periodic basis.

G. Develop and recommend policy changes, program plans, and budgets.

H. Interpret and enforce policies and procedures as specified in the Zuni Social Services Standard Operating Procedures.

I. Maintain a procedure for the appeal of Department administrative decisions and actions.

J. Revised, modify, and update the Standard Operating Procedures to reflect and maintain compliance with Federal, State and Tribal regulation changes, as necessary.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; Special Note: the version from which this was transcribed used the word "to" at Subsection-B, which has been modified to "[with]" above.)

§ 9-3-5. Compliance with Federal Laws

The Department shall comply with all applicable federal laws which govern the delivery of services, including the Preventing Sex Trafficking and Strengthening Families Act, Title IV-B, Title I-E of the Social Security Act, and applicable regulations and funding sources.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and Replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

CHAPTER 4. CHILDREN'S COURT

§ 9-4-1. Children's Court, Establishment and Jurisdiction

A. Original Jurisdiction - There is hereby established the Zuni Tribe Children's Court. Except as may otherwise be provided in this Code, the Children's Court has original jurisdiction over all proceedings brought under the Zuni Children's Code, and any other proceeding for the commitment of a minor, or the appointment of a guardian or custodian or similar arrangements for the care, custody, protection or best interests of a minor, whether or not arising from a proceeding under this Code.

B. Concurrent Jurisdiction - The Children's Court shall have concurrent jurisdiction over any minor who, within another jurisdiction, commits an act deemed illegal by the criminal laws of that jurisdiction provided that the minor is a resident of the Zuni Reservation or under the jurisdiction of the Court.

C. Composition - The Court shall include other forums for alternate dispute resolution and mediation under the supervision and authority of the Court.

D. Appeals - All final rulings and orders of the Court may be appealed to the Zuni Court of Appeals.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-4-2. Powers of the Children's Court

In addition to the powers and responsibilities under this Code, the Court shall have the following powers:

A. Authority - The Court shall hold and exercise all authority of the Tribal Court under the Constitution and laws of the Pueblo of Zuni for the purposes as established, defined and limited by this Code.

B. Cooperation - Cooperate with any federal, state, tribal, public, or private agency for foster care, shelter care, diversion, rehabilitation, or training programs, and with Tribal Council approval, to receive grants-in-aid and enter into agreements with agencies from other jurisdictions to carry out the purposes of this Title.

C. Social Services - Utilize social service programs as may be furnished by the Tribe or other available federal or state program.

D. Transfer from State Courts or Other Tribes - Accept or decline transfers from any state or tribal court.

E. Transfer to State Courts or Other Tribes - Transfer cases to an appropriate state or other tribal court in which the Court determines there is a significant interest in the child.

F. Zuni Judicial Code - To exercise all powers of the Tribal Court as provided by the Zuni Tribal Code, Title I, Chapter 3.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-4-3. Personnel in Court Proceedings

A. Judges - The Court shall consist of one or more judges appointed by the Tribal Council. The qualifications for appointment shall be as provided in the Tribal Code, Title I, Chapter 3.

B. Prosecutor - The Tribe shall appoint a Children's Court Prosecutor to carry out the duties and responsibilities of this Code, as may be needed.

C. Juvenile Probation Officer

1. Appointment and Duties - The Court shall assign a Juvenile Probation Officer who shall make social summaries, reports and other investigations as the Court may direct, or as provided in this Code, keep written records of such investigations and reports, and perform the duties provided in this Code, as may be assigned by the Court.

2. Law Enforcement Authority - The juvenile probation officer shall have the powers of a police officer for purposes designated in this Code, but shall refrain from exercising such powers except in urgent situations in which a regular police officer is not available.

D. Child Welfare Caseworker - The Child Welfare Caseworker, designated by the Social Services Department, shall conduct investigations and make reports to the Court, and perform other duties under this Code for a minor-in-need-of-care.

E. Public Defender - An attorney or advocate hired to defend a minor or the minor's parent or guardian in a proceeding under this Code.

F. Clerk - The Clerk of the Tribal Court or designee shall act as Children's Court Clerk and keep a record of the Court proceedings, issue all processes and notices required herein, and perform such other duties as may be assigned.

G. CASA/GAL - The Court may authorize activities in a proceeding of a CASA (Court Appointed Special Advocate), or a GAL (Guardian Ad Litem) pursuant to funding and guidelines authorized by the Tribe.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-4-4. Adults

A. Parental Responsibility

1. Parent as Party - The parent of an alleged juvenile offender or minor-in-need-of-care may be made a party.

2. Dispositions - The Court may order the parent to:

- a. Submit to counseling or education;
- b. Participate in any probation or other program offered by the Court;
- c. Participate in any treatment or counseling program ordered for the minor.

3. Restitution, Fines and Costs - The parent is not liable for any fine his child may be ordered to pay; however, the Court may hold the parent liable for restitution and court costs, in whole or in part.

4. Cost of Support - The Court shall order the parent to pay the reasonable cost or part of the cost of support and treatment of the child that the parent is able to pay if the child is found to be a minor-in-need-of-care or a juvenile offender.

5. The Court may assign public assistance, social security and child support payments received for the child's benefit to the Social Services Department for the custodian's use.

B. Other Adults - The Court shall join as a party any adult necessary for proper disposition of a case heard pursuant to this Code.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-4-5. Retention of Jurisdiction

Jurisdiction over a child shall continue until the child becomes 18 years of age, unless such jurisdiction is terminated prior thereto, provided that the Court shall maintain jurisdiction over a person who becomes 18 years of age for up to one year from events which occurred prior to the person's 18th birthday.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also M.B., a Minor v. Pueblo of Zuni, 27 SWITCA Rep. 30 (2016) (Pursuant to the Children's Code, the Children's Court does not necessarily lose jurisdiction over a minor upon turning 18 years old, but rather would be able to retain jurisdiction for up to one year after the occurrence of the underlying events even if the minor were to turn 18 during the course of that year).)

§ 9-4-6. Enforcement of Foreign Judgments and Orders

The Court will enforce the orders of state or other tribal courts pursuant to rules of court then in effect.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-4-7. Transfer of Indian Child Welfare Act Cases

Notwithstanding any other provision of this Code, the Court shall exercise the following authority over Indian Child Welfare Act cases:

A. Transfers from Other Jurisdictions - Upon receipt and consideration of a written request, the Court may accept the transfer of a case from another jurisdiction, subject to the limits of the Court's jurisdiction, and after finding that such transfer serves the best interest of the child. A court transferring a case to the Tribe's jurisdiction shall transmit all case records or certified copies thereof, pertaining to the case. The Court shall proceed with the case as if a petition had been originally filed in the Court. Except as otherwise ordered by the Court, matters adjudicated in the transferring court prior to transfer shall not be readjudicated in the Court.

B. Transfers to Other Jurisdictions - Upon receipt and consideration of a written motion from a party, the Court is authorized to transfer a case arising or proceeding within its jurisdiction to the court of another jurisdiction, after finding that such transfer services the best interest of the child. Upon entering an order transferring a case as provided in this Section, the Court shall serve a certified copy of the Order of Transfer and case file to the court clerk of the receiving jurisdiction. The Court may retain physical custody of the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order on notice, may close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer to the receiving jurisdiction.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-4-8. Investigations and Reports

The Court may require that an investigation be made and a written report be submitted to the Court in all cases, except civil traffic, fish and game, and boating cases. Reports for juvenile offenders shall be submitted to the Court for dispositional purposes after an adjudication finding the minor committed the alleged acts. Reports may be received in evidence, but the

Court may require that the person who appeared the report to appear as a witness, if reasonably available.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-4-9. Medical Examinations

The Court may order medical, forensic, psychological, and/or substance abuse examination for a minor or other party if relevant to the issues.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also M.B., a Minor v. Pueblo of Zuni, 27 SWITCA Rep. 30 (2016) (The purpose of a mental health report and testimony was to report the findings of an objective medical evaluation of a minor's mental and physical condition in order to assist the court with the determination of whether it was appropriate for a minor to be tried as an adult; It is fundamentally unfair, an abuse of discretion, and not in accordance with the Zuni Children's Code, for the Court to delay a transfer hearing beyond the 10-day statutory deadline for the purposes of allowing a mental health expert to prepare a report for the purposes of that transfer hearing, and then to exclude the mental health expert and their report; It is a statutory requirement for the Children's Court to consider a minor's mental age and emotional maturity when determining whether to try a minor as an adult, and placing the burden on the minor to raise those issues in order for them to be considered for the purposes of transfer violates a minor's due process rights).)

CHAPTER 5. PROCEDURES

§ 9-5-1. Rules of Procedure

The Chief Judge, with Tribal Council approval, may adopt rules of procedure for the conduct of the Children's Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-2. Commencement of Action

A. Petition - Except as otherwise provided in this Code, proceedings are begun by petition.

B. Exceptions to Petition - No petition is needed to commence an action for civil traffic, boating, or fish and game cases.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-3. Petition

A. Content - A petition shall be entitled, "In the Matter of _____, a Minor," and shall set forth:

1. The minor's name, birth date and residence;
2. The name and residence of the minor's parent, guardian or custodian;
3. The section of this Code which gives the Court jurisdiction;
4. Where applicable, the section of the Criminal Code which the minor is alleged to have violated;
5. If the minor is in custody, the place and time of custody; and
6. A concise statement of facts.

B. Preparation - The statements in the petition may be made upon information and belief and the petition shall be verified and signed.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-4. Summons

A. When Required - After a petition is filed and after such further investigation as the Court may direct, the Court shall issue a summons. No summons is required for any person who appears voluntarily or who files a written waiver of services with the Court Clerk at or prior to the hearing.

B. Content - The summons shall contain the name of the Court, the title of the proceedings, and, except for a published summons, a brief summary of the allegations in the petition. A published summons shall simply state that a proceeding concerning the child is pending in the Court.

C. Who to Receive - The summons shall be served on all parties and the person(s) having physical custody of the child requiring them to appear personally and bring the child before the Court at the time and place stated. If the person summoned is not the parent or guardian of the child, then a summons shall also be served on the parent or guardian, notifying them of the case and the time and place for the hearing. No summons is needed for a parent whose parental rights have been severed.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-5. Manner of Service of Court Orders

A. Who Serves Court Orders - Service of summons, subpoena or other Court order shall be made by Tribal Police officer, court bailiff; or other peace officer, or suitable person selected by the Court.

B. Place of Service - Service of summons, subpoena or other court order may be made by delivering a copy to the person summoned or subpoenaed; provided, however, that parents who live in the same home may both be served personally by delivering to either parent copies of the summons, one copy for each parent.

C. Service by Mail - If the Court is satisfied that personal service is impractical, it may order service by registered mail, return receipt requested, to be signed by the addressee only, to be addressed to the last known address of the person. Service shall be complete upon return to the Court of the signed receipt.

D. Service by Publication - If the address or whereabouts of a person to be served cannot be ascertained by diligent inquiry, service may be completed by publishing a summons in the newspaper having general circulation on the Reservation. The summons shall be published once a week for four successive weeks. Service shall be complete on the day of the last publication and proof of service shall be filed with the Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-6. Service - Time Requirement

A. Summons - For service on the Reservation, service completed not less than five days before the time set in the summons shall be sufficient to confer jurisdiction. For service outside the Reservation, service completed not less than eight days before the time set in the summons shall be sufficient to confer jurisdiction.

B. Subpoenas and Other Court Orders - Subpoenas and other court orders, including the subpoena of witnesses shall be served not less than 24 hours before the time set for hearing.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-7. Warrants and Orders for Custody

A. Custodial Warrant - The Court may issue a warrant directing that a minor be taken into custody upon a sworn written statement of facts showing probable cause to believe the minor is a juvenile offender and that custody is mandated under Section 9-7-3 C.

B. Emergency Custody Order - The Court may issue an emergency custody order upon a sworn written statement of facts showing probable cause exists to believe a minor is a minor-in-need-of-care and in immediate danger from his surroundings. Under Title IV-E requirements, this is the initial order and must state that it is contrary to the welfare of the child

[to] return home and to place care, control and placement authority with Zuni Tribal Social Services.

C. Search Warrant

1. The Court may issue a warrant authorizing a police officer to search for a minor if there is probable cause to believe the minor is within the Court's jurisdiction and a custodial warrant has been issued for the alleged juvenile offender, or an emergency custody order has been issued for a minor alleged to be a minor-in-need-of-care; or

2. The Court may issue a warrant authorizing a police officer to search for and seize property when probable cause has been established that the property would be material evidence in any proceeding.

D. Bench Warrant - The Court may issue a warrant for a person's arrest for contempt of court immediately upon the failure to appear in Court as ordered.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; Special Note: the version from which this was transcribed had the word "the" at Subsection-B, which was modified to "[to]" above.)

§ 9-5-8. Contempt of Court

The Court may hold a parent, guardian, adult, service provider, or any party in an action accountable for contempt of court after a hearing. The Court's contempt power is coextensive with the contempt power of the adult court and includes the power to jail a party for the deliberate refusal to comply with a lawful order of the Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-9. Civil Proceedings

Children's cases are civil proceedings governed by the Rules of Civil Procedure, except as modified by this Code.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-10. Conduct of Hearings

A. Private and Closed - Hearings shall be separate from other proceedings and closed to the public, except for civil traffic, fish and game and boating violation hearings. Only the parties, their advocate, attorney, witnesses, victims, and other persons requested by the parties and approved by the Court may be present at the hearing.

B. Informal, Non-Jury Hearing - All hearings shall be without a jury and conducted in an informal manner so long as the rights under this Code of every person are protected.

C. Alternative Measures - This section shall not be interpreted to preclude the use of alternate dispute resolution measures and alternative forums as the Tribe may establish.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-11. Standard of Proof

The standard of proof for an adjudicatory hearing for a juvenile offender shall be beyond a reasonable doubt, the standard for an adjudicatory hearing for a minor-in-need-of-care shall be clear and convincing evidence, for all other matters, unless otherwise provided, the standard shall be a preponderance of the evidence.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-12. Consolidation

When more than one child is involved in a matter the proceedings may be consolidated, except that separate hearings may be held for disposition.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-13. Amendment of Pleadings - Postponements

When it appears during a proceeding that the evidence alleges material facts not alleged in the petition, the Court may consider the additional matters raised by the evidence. In such event, the Court, on motion of a party or on its own motion, shall direct that the petition be amended to conform to the evidence. The Court shall grant such postponements [as] justice may require when a petition is amended.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; Special Note: the version from which this was transcribed had the word "ad", which has been modified to "[as]" above.)

§ 9-5-14. Special Rules of Procedure - Traffic, Fish and Game, Boating Laws

The Court may adopt special rules of procedure to govern proceedings involving violations of civil traffic, fish and game and boating laws.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-15. Presence of Child, Parent, Guardian, or Custodian

A. If the minor's parent, guardian or custodian is not present at a hearing, the Court may recess for not more than twenty-four hours if it appears that efforts to obtain the presence of a parent, guardian, custodian, or extended family will be successful.

B. The Court may excuse the presence of the child, or the child's parent or guardian at any stage of the proceedings when it is in the child's best interest. Lay counsel, attorney and guardian ad litem shall be permitted to continue to participate in a proceeding during the absence of the child, parent, guardian, or custodian. At the discretion of the Court, and for the best interest of the child, the Court may permit a child to testify by videotape, or take other steps necessary to protect the child in proceeding.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-16. Modification, Revocation or Extension of an Order

The Court may modify, revoke or extend an order at any time upon the motion of a party following a hearing.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-17. Judgment

The Court may modify, revoke or extend an order at any time upon the motion of a party following a hearing.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-5-18. Computation of Time

A. Computation - When calculating any period of time under this Code, the day of the event from which the period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday or court holiday in which case the last day is the next business day. When the period of time prescribed is less than seven days, including any time period prescribed in hours, intermediate Saturdays, Sundays, and court holidays shall be excluded in the calculation. Notwithstanding the foregoing, when a minor is taken into custody, if the last day under the time period for notification to the minor's parent, guardian or custodian falls on a weekend or legal holiday, the notification shall be made on that actual day, not the following business day.

B. Failure to Comply with Time Limits - Failure to comply with time limits is not grounds to dismiss an action, grant a new hearing or vacate or modify a judgment or order unless Court rules expressly provide otherwise, or refusal to take such action appears to the Court to work a substantial injustice.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also M.B., a Minor v. Pueblo of Zuni, 27 SWITCA Rep. 30 (2016) (Given that the Children's Court's jurisdiction ends either when the minor turns eighteen years of age or for up to one year after delinquent events occurring prior to the minor's eighteenth birthday, the right to a speedy trial is arguably even more urgent in juvenile proceedings).)

§ 9-5-19. Guardian Ad Litem/CASA

The Court may appoint a guardian ad litem or CASA for a minor at any stage of a proceeding if the minor has no parent, guardian or custodian appearing on behalf of the minor, if the interest of the minor conflicts with the interest of the parent, guardian or custodian, or when it appears to the Court that the child's best interests warrant the appointment.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

CHAPTER 6. PARTIES

§ 9-6-1. Parties; Intervention

A. In juvenile offender proceedings the child and the Tribe are parties. An adult may be made party pursuant to Section 9-4-4.

B. In minor-in-need-of-care proceedings the parties to the action are:

1. The Tribe;
2. The parents;
3. The child alleged to be a minor-in-need-of-care; and
4. Any party permitted by the Court to intervene in accordance with this

section.

C. The following persons may be permitted to intervene a minor-in-need-of-care proceeding under terms and conditions as the Court may prescribe:

1. A foster parent with whom the child resides;
2. An extended family member with whom the child resides;
3. A custodian appointed by the Court;
4. A stepparent with whom the child has resided;
5. A person who wishes to become the child's adoptive parent or

permanent guardian;

6. Another Indian tribe in which the child may be enrolled or eligible for enrollment.

D. In determining whether a person in Paragraph C may intervene, the Court shall consider the best interests of the child and whether intervention might unreasonably delay the proceedings.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-6-2. Right to Participate in Proceedings

Each party has the following rights in all proceedings:

- A. To be represented by an attorney or advocate at his own expense.
- B. To speak or testify at an appropriate stage of a proceeding.
- C. To subpoena witnesses and have witnesses testify on his behalf, and to cross-examine witnesses.
- D. To receive notice of all proceedings.
- E. To file an [appeal] as set out in this Code.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Amended by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also M.B., a Minor v. Pueblo of Zuni, 27 SWITCA Rep. 30 (2016) (When a juvenile offender is developmentally delayed, indigent, and does not fully comprehend the English language, the tribal court should appoint legal counsel to represent the minor; A mother representing her child in juvenile offender proceedings on allegations involving a separate child as a victim of those allegations is in a conflict of interest, which triggers the statutory duty of appointing the juvenile either a guardian ad litem or a Court Appointment Special Advocate; Failure of the Children's Court to appoint representation when a minor is indigent, developmentally delayed, and does not comprehend the proceedings, clearly denies the minor a fair transfer hearing and violates their rights to due process); Special Note: the version from which this was transcribed used the word "appear" at Subsection-E, which was modified to "[appeal]" above.)

§ 9-6-3. Obligations to the Court

Any person who is made a party to a proceeding under this Code is subject to the Court's jurisdiction and contempt power. Nothing herein is deemed to alter or waive the sovereign immunity of the Tribe.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-6-4. Due Process Guaranteed

All provisions of this Code shall be interpreted and applied to provide due process of law to all parties.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-6-5. Notice

The Department shall provide the parents and foster parents or guardians of a child and any pre-adoptive parent or relative providing care for the child with timely notice of and a right to be heard in any proceeding to be held with respect to the child during the time the child is in the care of such foster parent, pre-adoptive parent, or relative caregiver. Notice of and a right to be heard by itself does not entitle the caregiver to be a party to the proceeding.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

CHAPTER 7. JUVENILE OFFENDER PROVISIONS

§ 9-7-1. Taking a Minor into Custody

A law enforcement officer may take a minor into custody if:

A. The officer has a reasonable belief that the minor has committed a delinquent act in his presence;

B. A warrant has been issued for the minor; or

C. The officer has a reasonable belief that a minor who is subject to the Court's jurisdiction is leaving the territorial jurisdiction of the Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-7-2. Advisement of Rights

When taken into custody a minor shall be given the following warnings:

A. The minor has a right to remain silent;

B. Anything the minor says will be used against the minor in Court;

C. The minor has a right to the presence of an attorney or other lay counsel at his own expense during questioning.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also M.B., a Minor v. Pueblo of Zuni, 27 SWITCA Rep. 30 (2016) (When a juvenile offender is developmentally delayed, indigent, and does not fully comprehend the English language, the tribal court should appoint legal counsel to represent the minor; A mother representing her child in juvenile offender proceedings on allegations involving a separate child as a victim of those allegations is in a conflict of interest, which triggers the statutory duty of appointing the juvenile either a guardian ad litem or a Court Appointment Special Advocate; Failure of the Children's Court to appoint representation when a minor is indigent, developmentally delayed, and does not comprehend the proceedings, clearly denies the minor a fair transfer hearing and violates their rights to due process).)

§ 9-7-3. Release of Minor from Custody

A. Law Enforcement Officer - A law enforcement officer taking a minor into custody shall:

1. Immediately release the minor to his parent, guardian or custodian and issue verbal counsel as appropriate; or

2. Immediately deliver the minor to the juvenile probation officer or to detention or shelter care. If the minor is not delivered to the juvenile probation officer, the law enforcement officer shall immediately notify the juvenile probation officer of the custody and location of the minor.

B. Juvenile Probation Officer - The juvenile probation officer immediately upon notification or delivery of the minor shall review the need for detention or shelter care, and either:

1. Release the minor to his parent, guardian or custodian, or

2. If detention or shelter care is appropriate pursuant to this section, immediately notify the parent, guardian or custodian. The juvenile probation officer shall also advise the parent, guardian or custodian of the location of the custody, unless there is reasonable grounds to believe that disclosure of the location could jeopardize the minor's safety.

C. Exception - A minor may not be released from custody if:

1. A court order forbids release;

2. It appears the minor is in immediate danger of physical harm, or is a danger to others;

3. The minor's parents, guardian, or custodian cannot be located; or

4. Reasonable cause exists to believe the minor will run away.

D. Release - The minor shall be released to his parent, guardian or custodian within 72 hours of the time taken into custody unless the Court orders the custody to continue.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-7-4. Questioning of Minor in Custody

A minor in custody alleged to be a juvenile offender shall not be questioned except in the presence of his parent, guardian, custodian, attorney, or advocate except to determine identity and immediate needs, or except as permitted by Court order granted on an ex parte or emergency basis when warranted by compelling circumstances. A minor at least 16 years of age may select the person to be present during questioning.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-7-5. Petition

- A. Filing - The petition shall be filed within 24 hours of taking the minor into custody.
- B. Form and Content - The petition shall be the form authorized pursuant to the order of the Tribal Court and contain the provisions required in Section 9-5-3.
- C. Review - The juvenile probation officer shall review all petitions prior to filing.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-7-6. Preliminary Inquiry

- A. Purpose - The preliminary inquiry shall be to determine whether probable cause exists to believe the minor committed the alleged act and whether detention or shelter care is necessary pending further proceedings. The parties may present testimony and if needed, the Court may continue the Preliminary Inquiry for a period of not more than ten days for an additional evidentiary hearing to determine the probable cause for the arrest.
- B. Time Limit
 - 1. Minor Held in Custody - The preliminary inquiry shall be held within 72 hours of arrest of a minor held in custody. If a minor is released prior to 72 hours, the preliminary inquiry shall be held within 72 hours from the time of release.
 - 2. Minor Not Held in Custody - If the minor was not held in custody, the preliminary inquiry shall be held within twenty-one days of the filing of a petition.
- C. Juvenile Probation Officer Report - The juvenile probation officer will report on the circumstances and the best interests of the minor and the Tribe. The juvenile probation officer may also recommend the appropriate steps or proceedings to resolve the matter.
- D. Determination of Probable Cause - If the Court determines there is no probable cause to believe the minor committed the delinquent act, the petition shall be dismissed without

prejudice and the minor released from custody. If the Court determines there is probable cause to believe the minor committed the delinquent act, the Court shall order mediation, adjudication, or other procedures, as provided in this Chapter.

E. Plea and Disposition - If the minor wishes to admit he committed the delinquent act, the Court may proceed to the dispositional hearing as allowed by this Code, but it must first determine that:

1. The minor fully understands his rights under this Code;
2. The minor fully understands the consequences of admitting he committed the delinquent act; and
3. No facts have been stated which would be a defense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also M.B., a Minor v. Pueblo of Zuni, 27 SWITCA Rep. 30 (2016) (Given that the Children's Court's jurisdiction ends either when the minor turns eighteen years of age or for up to one year after delinquent events occurring prior to the minor's eighteenth birthday, the right to a speedy trial is arguably even more urgent in juvenile proceedings).)

§ 9-7-7. Continuation of Detention or Shelter Care

A. Placement - Pending further hearing or mediation, the Court may order the minor held in detention or shelter care only if:

1. The alleged act is serious enough to warrant continued detention or shelter care;
2. There is reasonable cause to believe the minor will run away;
3. There is reasonable cause to believe the minor is in immediate danger of harm, will commit harm to himself or others, or commit serious property damage; or
4. It is found, with the consent of parent(s), guardian, or custodian, that continued detention or shelter care is in the minor's best interest.

B. Adult Detention - An alleged juvenile offender who is sixteen years of age or older may be held in an adult detention facility only if:

1. He is charged with an offense that would subject him to a jail sentence if he were an adult;
2. No other adequate facility is available;
3. Detention is in a cell separate from sight and sound of adults certified by the B.I.A. as safe for holding minors; and
4. Adequate supervision is provided twenty-four hours a day and the minor is regularly checked in person.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-7-8. Pre-Adjudication Hearing

A. Purpose - The Court may schedule a pre-adjudication hearing before the adjudication to determine whether the parties are prepared and intend to proceed to adjudication or whether it is possible to resolve the remaining issues in a non-adversarial manner. A non-adversarial resolution may include a stipulation by the parties to the allegations and disposition, deferred adjudication, or other terms intended to resolve the issues in conformity with this Code.

B. Procedure - The Court may order the parties to participate in a settlement conference or mediation. If the parties advise the Court that the matter will proceed to adjudication, the Court shall confirm the time needed for trial, the scheduling of witnesses, whether disclosure has been completed, and address any other issues as may be raised by the parties.

C. Outcome - At the conclusion of the initial pre-adjudication hearing, the Court may enter an order approving the terms of an agreement of the parties, set the matter for an adjudication, or continue the pre-adjudication hearing.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-7-9. Hearing on the Petition (Adjudication)

A. Time Limit - A hearing on the petition shall be held within thirty (30) days after the Court's order at the preliminary inquiry, unless extended by order of the Court for good cause for a period of not more than an additional thirty (30) days.

B. Purpose - The Court shall conduct the hearing for the purpose of determining if a minor committed the alleged delinquent act.

C. Disposition - If the Court finds that the minor committed the delinquent act, the Court shall dispose of the matter in a manner [least] restrictive for the minor and consistent with the best interests of the minor and the Tribe as allowed in Section 9-7-12.

D. Final Order - A finding that the minor is a juvenile offender is a final order.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also M.B., a Minor v. Pueblo of Zuni, 27 SWITCA Rep. 30 (2016) (Given that the Children's Court's jurisdiction ends either when the minor turns eighteen years of age or for up to one year after delinquent events occurring prior to the minor's eighteenth birthday, the right to a speedy trial is arguably even more urgent in juvenile proceedings); Special Note: the version from which this was transcribed used the word "least" at Subsection-C, which has been modified to "[least]" above.)

§ 9-7-10. Pre-Dispositional Report

A. The Court may order the juvenile probation officer to prepare the report to the Court for the disposition of a juvenile offender, if needed. The report shall be filed at least two days before a dispositional hearing.

B. The report shall contain a specific plan for the care of the minor, including recommendations regarding the minor's parents, guardian or custodian calculated to resolve the problems presented in the petition. The report shall be limited to options which are the least restrictive to the minor and which promote a safe environment. The report shall cover home life, school attendance and requirements, a monitoring and support plan, and parent/guardian expectations. The report shall also contain conditions and expectations for the juvenile probation officer for the best interests of the child.

C. Copies of the report shall be provided to the minor, the parents, guardian or custodian and to other parties as soon as they are provided to the Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-7-11. Dispositional Hearing

A dispositional hearing shall be held within five days of the adjudication, except that the Court may hold the dispositional hearing immediately after the adjudication if it would be in the best interest of the minor.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-7-12. Juvenile Offender - Dispositions

A. The conditions the Court may set shall be designed to improve the condition of behavior of the child. Such conditions may include but are not limited to counseling, therapy, traditional healing, restrictions on visits with one or both parents, payment of support or other necessary costs, attendance at school, participation in social cultural or religious activities, volunteer or community service work, restrictions on associations, curfew, or any other dispositions as set out in this Code.

B. The Court may make any or all of the following dispositions:

1. Any disposition that is authorized for the disposition of a juvenile offender.
2. Place the minor on probation, subject to conditions set by the Court.
3. Place the minor in an institution, whether within or outside the Zuni Reservation.
4. Place the minor in the tribal detention facility or other detention facility located outside the Zuni Reservation.

5. Require the minor to make restitution in accordance with tribal custom; and/or

6. In cases of violations of traffic laws, the Court may, in addition to any other disposition, restrain the child's driving privileges for a period of time the Court deems appropriate.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-7-13. Review of Disposition

A. Review - Dispositional orders are to be reviewed at the Court's discretion, but at least once every six months. On a monthly basis the juvenile probation officer shall review the status of each dispositional order for juvenile offenders and provide a report of each active case to the Court.

B. Discretionary Review - An interested party as recognized by the Court may request the Court for a review and disposition at any time. The granting of such a request is at the discretion of the Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-7-14. Transfer to Tribal Court of Alleged Juvenile Offender

A. Petition - The prosecutor may file a petition requesting the Court to transfer an alleged juvenile offender to the jurisdiction of Tribal Court if the minor is at least 16 years of age and is alleged to have committed an act, which if committed by an adult, would be a Class A offense under the Criminal Code or a felony under the laws of another jurisdiction.

B. Hearing - The Court shall conduct a hearing within ten days of filing to determine whether the matter should be transferred.

C. Report - The juvenile probation officer shall prepare and present a written report to the Court at least three days before the transfer hearing containing information on the alleged offense; and the minor's condition, as evidenced by his age, mental and physical condition; past record of offenses; and rehabilitation efforts. Within the same time limit, the prosecutor and other parties may also file written recommendations.

D. Deciding Factors - The following factors shall be considered by the Court in determining whether to transfer jurisdiction:

1. The nature and seriousness of the offense, as set forth in the petition;
2. The minor's emotional maturity, mental condition as indicated in the reports provided to the Court; and
3. The past record of offenses and rehabilitation efforts.

E. Standard of Proof and Findings - The Court may transfer the matter to the Tribal Court if it finds by a preponderance of the evidence no reasonable prospect for rehabilitating the minor through resources available to the Court, and either of the following exists:

1. The past offenses committed by the minor indicate a pattern of conduct constituting a substantial danger to the public; or

2. The offense with which the minor is charged indicates conduct that constitutes substantial danger to the public.

F. The Court's order is a final order for purposes of appeal.

G. The Children's Court Judge may not preside over a case that has been transferred to the Tribal Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also M.B., a Minor v. Pueblo of Zuni, 27 SWITCA Rep. 30 (2016) (Proceedings to determine whether to transfer a juvenile-offender case to the tribal court are not "criminal" proceedings because criminal proceedings involve an adult defendant, or a minor being tried as an adult in Zuni Tribal Court; Pursuant to the Children's Code, the Children's Court does not necessarily lose jurisdiction over a minor upon turning 18 years old, but rather would be able to retain jurisdiction for up to one year after the occurrence of the underlying events even if the minor were to turn 18 during the course of that year; The purpose of a mental health report and testimony was to report the findings of an objective medical evaluation of a minor's mental and physical condition in order to assist the court with the determination of whether it was appropriate for a minor to be tried as an adult; It is fundamentally unfair, an abuse of discretion, and not in accordance with the Zuni Children's Code, for the Court to delay a transfer hearing beyond the 10-day statutory deadline for the purposes of allowing a mental health expert to prepare a report for the purposes of that transfer hearing, and then to exclude the mental health expert and their report; It is a statutory requirement for the Children's Court to consider a minor's mental age and emotional maturity when determining whether to try a minor as an adult, and placing the burden on the minor to raise those issues in order for them to be considered for the purposes of transfer violates a minor's due process rights).)

§ 9-7-15. Probation Revocation Hearing

A. A minor who is alleged to have violated his terms of probation may be proceeded against in a probation revocation hearing. All procedures applicable to juvenile offender petitions shall be followed in a probation revocation proceeding.

B. If the Court finds a minor has violated probation terms it may:

1. Extend the period of probation; or

2. Make a disposition that would have been appropriate in the original disposition.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

CHAPTER 8. MINOR-IN-NEED-OF-CARE PROVISIONS

§ 9-8-1. Authority/Power to Remove

A. A law enforcement officer or child welfare worker shall take a minor into custody if:

1. He has a reasonable belief that the minor is a minor-in-need-of-care;
2. He has a reasonable belief that the minor is in immediate danger in his home environment and that removal is necessary; or
3. An emergency custody order has been issued for the minor.

B. The Social Services Department shall be notified of the removal at the time the minor is taken into custody.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-2. Notice of Removal

The Social Services Department shall make all reasonable efforts to notify the child's parents, guardian, or custodian of the removal within twelve (12) hours of the time the removal occurred. Reasonable efforts shall include personal, telephonic, or written contacts at their residence, place of employment, or other location where the parent, guardian, or custodian is known to frequent with regularity. If the parent, guardian, or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian, or custodian and/or the extended family of the child.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-3. Release of Minor From Custody

A. Return to Home Environment - Except as provided below, a child taken into custody shall be released to the parent, guardian, or custodian. The law enforcement officer or child welfare caseworker shall provide verbal counsel as appropriate for the child's welfare and the child welfare caseworker shall complete a follow-up review to determine whether additional measures are needed.

B. Delivery to Shelter Care - Any child taken into custody shall be delivered to shelter care if there are reasonable grounds to believe the child would be in immediate danger in his home. The child welfare caseworker shall immediately notify the child's parent, guardian, or custodian of the custody.

C. Release - The minor shall be released to his parent, guardian, or custodian within 48 hours of the time taken into custody unless a petition is filed with the Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-4. Petition

A. Filing - The petition shall be filed within 72 hours from the time the minor is removed from the home.

B. Form and Content - The petition shall be the form authorized pursuant to the order of the Tribal Court and contain the provisions required in Section 9-5-3.

C. Review and Assistance - The child welfare caseworker shall assess the circumstances which are the grounds for the petition.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-5. Family Agreement in Lieu of Petition

In a case which does not involve the removal of the child from the home, the Department, in its discretion, may enter into a voluntary agreement with the child's parent or guardian, and with the child, if more than fourteen years of age, in lieu of filing a petition with the Court. The agreement will identify conditions, expectations and services in sufficient detail to constitute a Service Plan.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-6. Preliminary Inquiry

A. Purpose - The purpose of the preliminary inquiry is to determine whether probable cause exists to believe a child is a minor-in-need-of-care, and to identify appropriate services for the child and family and whether shelter care is necessary pending further proceedings. If needed, the Court may hear testimony from the parties to determine probable cause.

B. Time Limit

1. Minor Held in Custody - If a minor is held in shelter care the preliminary inquiry shall be held within 72 hours from the time the petition is filed. If the minor is released prior to filing the petition, the preliminary inquiry shall be held within ten days of the filing of the petition.

2. Minor Not Held in Custody - If the minor was not held in shelter care the preliminary inquiry shall be held within twenty-one days of the filing of the petition.

C. Initial Service Plan - Immediately prior to the hearing the child welfare caseworker will meet with the minor's parent or guardian and identify the initial terms of the service plan for the minor and the family. The service plan shall contain the elements specified in Section 9-8-8.

D. Child Welfare Caseworker Report - The child welfare caseworker will complete a preliminary investigation into the circumstances, including the risks of the home environment and provide a report on the findings at the preliminary inquiry. The child welfare caseworker shall make a recommendation on the steps or proceedings to pursue, based upon the best interests of the minor. The child welfare caseworker will provide to law enforcement information obtained at any stage of the proceedings that may be relevant to filing criminal charges against an adult.

E. Determination of Probable Cause - If the Court determines there is no probable cause to believe the minor is a minor-in-need-of-care, the petition shall be dismissed without prejudice and the minor released to the parent, guardian, or custodian. If the Court determines there is probable cause to believe the minor is a minor-in-need-of-care, the Court shall enter an order as provided in Section 9-8-7.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Amended by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-7. Initial Court Order

If the Court determines there is probable cause to believe the minor is a minor-in-need-of-care, before the conclusion of the Preliminary Inquiry the Court shall:

A. Admission/Denial - Inquire whether the parent or guardian wishes to deny, admit or [plead no] contest the allegations in the petition. If the parent or guardian admits or does not wish to contest the allegations, the Court may immediately proceed with an adjudication hearing. If the parent denies the allegations in the petition, the Court shall schedule mediation or adjudication.

B. Custody - Release the minor to his parent, guardian, custodian, or extended family member pending final disposition, or order the minor's custody or continued custody to Social Services. If the Court finds it is in the best interest of the child to remain in an out-of-home placement under the legal custody of Social Services, the Court shall issue an order making findings of fact and stating that based on the evidence presented and the recommendations of the Department, it is contrary to the welfare of the child to return home, and that care, control, and placement responsibility for the child is vested in the Department. The Court order shall also determine if reasonable efforts were made to keep the child in the home.

C. Services - Verify whether appropriate services detailed in a service plan have been identified and offered for the minor and the family, and issue an order directing the parties to comply with the service plan.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; Special Note: the version from which this was transcribed used the language "deny, admit or not contest" at Subsection-A, which has been modified to "deny, admit or [plead no] contest" above.)

§ 9-8-8. Service Plan

A. The caseworker shall have primary responsibility to prepare, update and amend the service plan as circumstances warrant. If possible, the service plan will be developed with the participation and signed agreement of the child's family, and, in the case of a child fourteen years of age or older, with the child. The service plan shall contain specific conditions and obligations for the care of the minor, including recommendations regarding the minor's parents, guardian or custodian calculated to resolve the problems presented in the petition. The report shall be limited to options which are the least restrictive to the minor and which promote a safe environment. The report shall cover home life, school attendance and requirements, a monitoring and support plan, and parent/guardian expectations. The report shall also contain conditions and expectations for the child welfare case worker for the best interests of the child.

B. The service plan shall have as a primary objective, the reunification of the family, or if the parents neglect or refuse to comply with the terms and conditions of the case plan, freeing the child for adoption or permanent guardianship.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-9. Pre-Adjudication Hearing

A. Purpose - The Court may schedule a pre-adjudication hearing before the adjudication to determine whether the parties are prepared and intend to proceed to adjudication or whether it is possible to resolve the remaining issues in a non-adversarial manner. A non-adversarial resolution may include a stipulation by the parties to the allegations and disposition, deferred adjudication, or other terms intended to resolve the issues in conformity with this Code.

B. Procedure - The Court may order the parties to participate in a settlement conference or mediation. If the parties advise the Court that the matter will proceed to adjudication, the Court shall confirm the time needed for trial, the scheduling of witnesses, whether disclosure has been completed, and address any other issues as may be raised by the parties.

C. Outcome - At the conclusion of the initial pre-adjudication hearing, the Court may enter an order approving the terms of an agreement of the parties, set the matter for an adjudication, or continue the pre-adjudication hearing.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-10. Adjudication

A. Time Limit - An adjudicatory hearing shall be held within thirty (30) days after the preliminary inquiry, unless extended by order of the Court for good cause for a period of not more than an additional thirty (30) days.

B. Procedure - The Court shall conduct the hearing to determine if a minor is a minor-in-need-of-care. If the Court finds at the conclusion of the adjudicatory hearing that the minor is a minor-in-need-of-care, the Court shall schedule the matter for disposition.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also M.B., a Minor v. Pueblo of Zuni, 27 SWTCA Rep. 30 (2016) (Given that the Children's Court's jurisdiction ends either when the minor turns eighteen years of age or for up to one year after delinquent events occurring prior to the minor's eighteenth birthday, the right to a speedy trial is arguably even more urgent in juvenile proceedings).)

§ 9-8-11. Disposition

A. Disposition Report - The Court may order the child welfare caseworker to prepare a report for the disposition of a minor-in-need-of-care, if needed. The report shall be filed at least two days before a dispositional hearing. At a minimum, the report shall contain all the elements of the service plan, as updated from the date of the adjudication. Copies of the report shall be provided to the minor, the parents, guardian or custodian and to other parties as soon as they are provided to the Court. Other parties may also submit written reports with copies to the other parties within the same time limit.

B. Dispositional Hearing - A dispositional hearing shall be held within five days of the adjudication, except that the Court may hold the dispositional hearing immediately after the adjudication if it would be in the best interest of the minor.

C. Outcome

1. The Court shall direct that the service plan be maintained and updated, as necessary to provide services to the child and family and confirm the placement of the child.

2. Where circumstances warrant, and it is determined to be in the child's best interests, the Court may transfer custody to a tribal, county or state agency, or to an extended family member or other person qualified to receive and care for the child, subject to such limitations and conditions as the Court may prescribe.

3. The Court may also direct that proceedings be initiated to terminate parental rights or grant full or partial emancipation for the child.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-12. Court Order for Continuing Removal - Reasonable Efforts Findings

A. The Court shall specify in its order the necessary intervention and appropriate steps, if any, the parent, guardian, or custodian must follow to correct the underlying problem.

B. The Court shall, specify the reasonable efforts made by the Department to prevent the child's removal from the home or, in the alternative, shall specify why reasonable efforts to prevent removal were not required or, that reasonable efforts were not made.

C. If the court does not make a finding of reasonable efforts at the adjudication hearing, the Court must make the reasonable efforts findings prior to sixty (60) days from the date the child was removed from the home.

D. If, at any time during the life of a case, the Court finds the existence of aggravated circumstances, as defined in Section 9-8-16, it shall issue an order finding the aggravated circumstances and indicating the reasonable efforts to prevent removal of the child from the home or to reunify the child with the family will not be required.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-13. Grounds for Continuing Removal From the Home

The grounds for continuing removal of a child from the home of a parent, guardian or custodian are that:

A. The child has no parent, guardian, or custodian available, willing, and capable to care for the child, or has otherwise been abandoned;

B. The child has suffered, or is likely to suffer, a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily functions;

C. The child has not been provided with adequate food, clothing, shelter, medical care, education, or supervision by his/her parent, guardian, or custodian, which is necessary for the child's health and well-being;

D. The child has been sexually abused or sexually exploited;

E. The child has committed juvenile offenses as a result of parental pressure, guidance, or approval;

F. The child has been emotionally abused or neglected; or

G. The child has suffered, or is likely to suffer, emotional damage which causes or creates a substantial risk of impaired development.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-14. Reasonable Efforts to Prevent Removal Not Required; Aggravating Circumstances

Reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family if any of the following aggravating circumstances are found:

A. A court of competent jurisdiction has found that the parent has subjected the child to abandonment, torture, chronic abuse, sexual abuse, serious bodily injury or other act which would constitute a serious disregard of the child's well-being.

B. A court of competent jurisdiction has convicted the parent of a criminal act that caused the death or the attempted murder of another person.

C. A court of competent jurisdiction has convicted the parent of a criminal act that results in serious bodily injury to the child or another child of the parent.

D. The parental rights of the parent with respect to a sibling have been terminated involuntarily.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-15. Review of Disposition

A. Review - Dispositional orders are to be reviewed at the Court's discretion, but at least once every six months.

B. Discretionary Review - An interested party as recognized by the Court may request the Court for a review of disposition at any time. The granting of such a request is at the discretion of the Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-16. Written Order

At each Dispositional hearing or review hearing, the Court shall specify in writing the facts, grounds, and recommendations of the child welfare caseworker, or probation officer and the Code sections, if applicable, upon which it relied to make its decisions.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-8-17. Final Order

A dispositional order is a final order for purposes of appeal.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

CHAPTER 9. PERIODIC REVIEW OF PLACEMENTS

§ 9-9-1. Periodic Review of Placement

Every six months the Court shall hold a periodic review hearing. At the hearing the status of the child will be reviewed under the case review system, with reports and recommendations made to the Court. The review shall include the following:

- A. Provide an assessment within 30 days of placement to determine the continuing need for and appropriateness of the placement and documents the need for the safety of the child;
- B. Determine the extent of compliance with the case and permanency plans;
- C. Determine the extent of progress made toward easing or lessening the cause(s) requiring the placement in foster care; and
- D. Project a likely date by which the child may be returned home or placed for adoption or legal guardianship.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-9-2. Permanency Planning Hearing

A. Within 12 months of the original placement and every twelve months thereafter, the Court shall hold a permanency planning hearing to determine the future status of the child. If the Court determines that reasonable efforts to return the child to the child's home are not required, the permanency planning hearing shall be held within thirty days of that determination. The permanency planning hearing may be combined with the periodic review hearing.

- B. The Court may order, but is not limited to, any of the following dispositions:
 - 1. Return the child to the parent(s);
 - 2. Place the child with an extended family member;
 - 3. Appoint a guardian and place the child with the guardian;
 - 4. Continue the child in foster care for a specific period;
 - 5. Continue the child foster care on a long term basis; or
 - 6. Recommend proceedings to terminate parental rights and place the child for adoption.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Amended by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-9-3. Procedures for Review Hearings

The Court shall return a child to the custody of his parent or guardian unless by a preponderance of evidence it finds that returning the child would cause a substantial risk to the well-being of the child. The Court shall review the placement reports and recommendations, consider any other evidence and may order any additional services for the child.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-9-4. Periodic Reviews After Permanency Planning Hearing

Periodic reviews conducted by the Court after the initial permanency planning hearing shall determine the appropriateness of the placement, the continuing appropriateness and extent of compliance with the permanent plan for the child, the extent of compliance with the case plan, and adequacy of services provided to the child. By the end of the 12th month of foster care, a decision regarding the permanent placement plan of the minor shall be made.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-9-5. Permanent Placement Reports and Recommendations

A. Tribal Social Services Department Duties - To achieve permanent placement as required by this Code, the Department shall prepare and provide recommendations to the parties at least five days before the permanency plan hearing and at least two days before each periodic review.

B. Reports and Recommendations - Each report shall recommend whether the minor should be immediately returned to his parent or guardian. If the Department recommends against return, the report should indicate whether the minor can [be] expected to return to his parent's or custodian's custody within a reasonable time. If the report is prepared for a permanency plan hearing and the Department determines there is substantial probability that the child cannot be returned to his parent or guardian within six months, the report should address other permanent placement options.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; Special Note: the word "[be]" has been inserted at Subsection-B, which was missing from the version from which this was transcribed.)

CHAPTER 10. FOSTER CARE

§ 9-10-1. Foster Care Licensing Standards

Foster care licensing standards shall be implemented and enforced to serve the best interests of children and with the objective of securing a sufficient number and variety of homes and facilities to serve the needs of the Department's service population in compliance with the

standards of Section 9-2-3. The Department shall recruit and provide training and oversight for foster parents to ensure all foster placements further the objectives of this Code.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-10-2. Foster Care Licensing

A. The Social Services Department has authority to license all foster care, guardianship, and adoptive homes pursuant to the regulations set forth in this Code and the Zuni Social Services Foster Care Licensing Standards, and all relevant policies and procedures.

B. The Department is responsible for ensuring that the requirements in the Licensing Standards are completed for all prospective foster parents, adoptive parents, and guardians who have applied for licensing prior to approval and/or issuance of a foster care license.

C. The Department is responsible for all licensing and re-licensing of foster homes. For the purpose of licensing an off-reservation foster home, the Department may rely upon the investigation and issuance of a license by the jurisdiction in which the foster home is located. Licensing Standards will be reviewed at least every three (3) years to ensure they continue to be reasonable and effective to ensure the safety of children placed in out-of-home care.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-10-3. Licensing Procedures

A. The Department will establish and maintain written procedures to ensure the suitability of foster placements. At a minimum such procedures will require background investigations, references and the full release of criminal history information of any person seeking to become licensed foster parent and any adult living in the foster parent's home.

B. The Department will complete [an investigation to] include a check of child abuse, child neglect and sexual offenders' registries for information on any prospective foster parent, prospective adoptive parent, prospective guardian, and on any other adult living in the home of such a prospective parent/guardian for such information, before the prospective foster parent, adoptive parent, or guardian may be finally licensed, regardless of whether foster Care, Adoptive, or Guardianship payments are to be made on behalf of a child;

C. All fingerprinting, criminal records checks, child abuse and neglect, and sexual offenders' registry checks shall be valid for a period of two (2) years.

D. The licensing file of a child care institution wherein a child may be placed must contain a copy of the current license issued by the jurisdiction in which the institution is located.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; Special Note: the words "[an investigation to]" have been added to Subsection-B, which was missing from the version from which this was transcribed.)

§ 9-10-4. Foster Care Licensing Non-approval

The Department will not approve or license any prospective foster parent, adoptive parent or guardian, or claim federal financial participation for any maintenance to assistance provided on behalf of a child placed in a foster home, adoptive home, or relative placement, if:

A. The prospective guardian or foster parent or adoptive parent has ever been convicted of a crime involving:

1. Child abuse or neglect;
2. Spousal or intimate partner abuse, including domestic violence;
3. A crime against a child or children (including child pornography); or
4. A crime involving violence, including rape, sexual assault, sex trafficking, human trafficking or homicide, but not including other physical assault or battery.

B. The prospective foster parent has, within the last five years, been convicted of a crime involving:

1. Physical assault;
2. Battery; or
3. A drug-related offense.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-10-5. Supervision by the Department

In addition to other requirements of this Code, the Department shall maintain supervision of all children placed by the Department in foster care and shall maintain supervision of and make regular visits to such foster placements. The Caseworker shall visit each child in foster placement no less than once every month.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

CHAPTER 11. TERMINATION OF PARENTAL RIGHTS

§ 9-11-1. Purpose

This chapter is to provide for voluntary or involuntary termination of the parent-child relationship by court order. Involuntary termination of parental rights over a child is a serious matter that the Court may take only after all remedies to maintain the family structure have been exhausted.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-11-2. Enrollment and Inheritance Status

Termination of parental rights shall not affect a child's Tribal enrollment or Indian blood quantum, nor affect a child's rights of inheritance from his natural parents so long as the child has not been adopted.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-11-3. Grounds for Involuntary Termination

A. Termination Allowed - The Court may order the termination of parental rights when the Court finds beyond a reasonable doubt that the conduct or condition of the parent is such as to render the parent unable to care for the child and that such conduct or condition is unlikely to change within one year.

B. Factors to be Considered - The Court shall consider, but is not limited to, the following:

1. Emotional or mental illness or mental deficiency of the parent;
2. Abuse, neglect or abandonment of the minor;
3. Excessive use of intoxicating liquors or illegal substances;
4. Adjudication by a court that the parent caused the death or serious injury of a minor's sibling;
5. Failure to provide reasonable substitute care and maintenance where custody is lodged with others;
6. Failure to maintain regular contact with the child under a plan to reunite the child and parent; or
7. Failure to maintain regular contact with the child for over a period of one year.

C. Parent Unknown - The Court may order the termination of parental rights if it finds that the child has been left under circumstances such that the parent's identity is unknown and cannot be ascertained despite diligent searching. Efforts to locate the parent(s) shall be not less than the standards governing the service of process in Chapter 5.

D. Best Interest of Child - The Court's decision shall be guided by the best interests of the child.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-11-4. Reports

A. Child Welfare Caseworker Report - The child welfare caseworker shall prepare and present a written report to the Court at least ten days before the termination of parental rights hearing. The report shall contain the recommendations of all professionals consulted on the social history of the parent and child and all other pertinent facts. A copy shall be available to the parent whose rights are being severed at the time the report is provided to the Court.

B. Additional Reports - A parent whose rights are being terminated may also file a written report. The Court may also order other persons or agencies to submit written reports. All reports shall be filed ten days prior to the hearing and provided to all parties when filed.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-11-5. Appointment of Guardian Ad Litem

In any proceeding for termination of parental rights, whether voluntary or involuntary, or any rehearing or appeal thereon, the Court shall appoint a guardian ad litem on behalf of the minor.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also Karen and Manuel G, In the Matter of Cessation of Parental Rights, 21 SWITCA Rep. 3 (2010)(The Court is required to appoint a guardian ad litem to represent a minor child in cases of voluntary or involuntary cessation of parental rights; Appointment of a guardian ad litem to represent a minor child in cases of cessation of parental rights is in the best interest of the child).)

§ 9-11-6. Hearing

A hearing shall be held within 30 days after the petition is filed. The Court shall subpoena experts who have knowledge of the case, including physicians, psychiatrists, mental health professionals, social workers and individuals from the community cognizant of traditional child-rearing methods and cultural standards.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-11-7. Judgment

If the Court finds cause to order the termination of parental rights, the Court shall issue its judgment detailing the reasons for the decision, and order the disposition of the minor as follows:

A. Place the minor with an extended family member, or placement pursuant to Section 9-2-2;

B. Proceed to the Adoption chapter of the Code;

C. Reassign guardianship to an extended family member, or other custodian as deemed appropriate.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; see also Karen and Manuel G, In the Matter of Cessation of Parental Rights, 21 SWITCA Rep. 3 (2010) (Orders and findings should be clearly worded and, when possible, refer to specific provisions of law; In order for the Pueblo of Zuni to make a determination of cessation of parental rights, the Children's Court must consider the facts of the case with strict adherence to the tribal court process, and any determination must be made in accordance with tribal law).)

§ 9-11-8. Appeal

A judgment of involuntary termination of parental rights is a final order for [purposes] of appeal.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; Special Note: the version from which this was transcribed used the singular word of "purpose", which has been modified to the plural of "[purposes]" above.)

§ 9-11-9. Voluntary Termination of Parental Rights

A. Initial Procedures - The Court may order the voluntary termination of parental rights, subject to the following limitations:

1. The petition may not be filed before a child is ten days old; and

2. No voluntary termination shall occur until a report is submitted by the Social Services Department indicating that counseling has been offered to the parent, that the consequences of the actions have been fully explained and are understood by the parent, and that the action is in the best interest of the child.

B. Counseling - If the Court questions the petitioner's ability to understand the consequences of his decision, the Court shall place the child with the Family Services Division for up to 30 days to allow the parent to consider his decision. The Court shall order legal and psychological counseling for the parent to assure his understanding of the consequences of his decision.

C. Procedures After Counseling - Immediately after the 30-day- period based upon the report received by the Court, the Court shall either:

1. Return custody of the child to the parent;

2. Process the petition for voluntary termination of parental rights; or

3. Extend the period for not more than 30 days to allow additional counseling. At the expiration of the additional counseling the Court shall proceed as allowed by this Code.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-11-10. Interpreter for Voluntary Termination of Parental Rights and Consent to Adoption

A parent who elects to terminate his or her parental rights or consents to adoption shall be provided an interpreter if he does not understand English.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

CHAPTER 12. ADOPTION

§ 9-12-1. Who May Adopt, Conditions and Notice

A. Who May Adopt - The following persons may adopt:

1. Any adult;
2. In the case of married persons maintaining a home together, both spouses shall be petitioners except that, if one of the spouses is the natural parent of the minor to be adopted, the natural parent shall not be a party to the petition;
3. A married person legally separated may adopt without the consent of his spouse.

B. Conditions to Adoption

1. The best interests of the child shall be primary;
2. A person petitioning to adopt shall be at least ten years older than the minor;
3. Preference in adoption shall be given in the following order:
 - a. Extended family member;
 - b. Enrolled Zuni Pueblo member;
 - c. Member of other Pueblo;
 - d. Member of other Indian tribe; or
 - e. Non-Indian.

4. The Social Services Department shall be notified within five days after the petition is filed.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-12-2. Who May Be Adopted - The following persons may be adopted:

- A. A minor enrolled in or eligible for enrollment in the Tribe.
- B. An adult enrolled in or eligible for enrollment in the Tribe and whose parents are both dead.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-12-3. Petition

The petition filed with the Court shall contain:

- A. The full name, residence, place of birth, date, sex and clan membership of the child, with attached documentary proof of the date and place of the birth of the child to be adopted;
- B. Documentary proof of the child's enrollment with the Tribe, and, if available, documentation of the child's clan membership;
- C. The full name, residence, date and place of birth, and occupation of the adoptive parent(s), a statement of relationship to child, with proof of their marital status, provided that this shall not be interpreted to prohibit single parent adoptions;
- D. Proof of consent, in compliance with Section 9-12-5;
- E. An agreement by the adopting parent that includes terms for an appropriate relationship with the natural parents and family, unless the rights of the natural parents have been terminated;
- F. A description and statement of value of all property owned, possessed or held in trust by and for the child;
- G. A citation to the section of this Code which gives the Court jurisdiction over the proceedings; and
- H. A brief and concise statement of the facts.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-12-4. Investigative Report

A. Child Welfare Caseworker - Within 60 days of the filing of the petition the child welfare caseworker shall undertake a home study and prepare and present to the Court a report detailing the suitability of the child for adoption, and the suitability, home environment, and financial, moral, physical, and emotional fitness and background of the adopting parent(s). The child welfare caseworker shall contact agencies and individuals having knowledge of the [character] and fitness of the adopting parents, and such information shall be included in the report. The report may include a recommendation for or against the proposed adoption.

B. Other Agencies; Individuals - The Court may also order other appropriate agencies or individuals to prepare and file written reports with the Court to aid in the Court's determination.

C. Copies - Copies of reports shall be served on the petitioner at the same time they are filed with the Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; Special Note: the version from which this was transcribed used the word "charger" at Subsection-A, which has been modified to "[character]" above.)

§ 9-12-5. Consent to Adoption

Written consent to adoption is required if:

A. Each biological, adoptive and acknowledged parent, unless such parent's parental right has been terminated, the parent has been declared incompetent, or cannot be located;

B. The guardian or custodian, but only if empowered to consent to an adoption; and

C. The minor, if over fourteen years of age.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-12-6. Procedure for Signing the Consent to Adopt

Written consents, where required by this Code, shall be attached to the petition for adoption and acknowledged before the Court. Consent shall not be accepted by the Court unless signed and acknowledged more than ten days after birth of the child.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-12-7. Withdrawal of Consent to Adopt

Consent to an adoption cannot be withdrawn after the entry of a final order of adoption, but may be withdrawn prior to the final order for any reason.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-12-8. Hearing on Adoption

A. Purpose; Time Limit - A hearing shall be held within 90 days of receipt of an adoption petition to determine if it is in the minor's best interest to be placed with petitioners.

B. Procedure at Hearing - The adoptive parent or parents shall appear personally at the hearing. At or before the hearing, any biological, adoptive or acknowledged parent who is consenting to the adoption must appear personally so that the Court can determine the understanding with which the consent is given.

C. Order

1. Granting the Petition - If the Court finds it is in the child's best interests the Court may enter a final decree of adoption as follows:

a. For a child who has lived with the adoptive parent for more than one year before the petition was filed, the final decree of adoption shall be entered immediately;

b. In all other cases, the Court shall order that the child be placed in the adoptive parent's custody for one year. At the expiration of the year, or such time period as may be the Court shall request a supplemental report and if the Court determines that the best interests of the child are served by the adoption, it shall enter the final decree of adoption. Notwithstanding the foregoing, the Court may for good cause reduce or waive the one year period if the adoptive parent is the child's guardian.

2. Denying the Petition - If the Court determines that the adoption petition is not in the child's best interests or if there is a showing that consent was not voluntary, the petition shall be denied. The Court may request the Social Services Department or other agencies to assist in the placement and care of the child consistent with this Code.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-12-9. Contents of Adoption Order

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable of providing the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence produced at the hearing.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-12-10. Adoptive Birth Certificate; Release of Original Certificate

Within five days after the final decree of adoption has been entered, the Clerk of Court shall provide a certified copy of the final decree to the Social Services Department and the Division of Vital Statistics of the State Board of Health of the state which issued the original certificate of birth so that the new record of birth in the new name and with the name or names of the adopting parents can be recorded.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-12-11. Name and Legal Status of Adopted Child

Persons adopted by order of the Court shall assume the surname of the persons by whom they are adopted, unless the Court orders otherwise. They shall be entitled to the same rights as heirs of the persons adopting them; however, adoption does not confer tribal membership status on the adopted person who would not be otherwise eligible.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-12-12. Adoption Records

A. Confidentiality - All adoption records shall be sealed and not available for release, except as provided below.

B. Release of Information. Notice to Biological Parent - Information contained in adoption records shall be released upon petition to the Court by the adopted person after reaching the age of majority, or upon order of the Court upon showing of good cause by other persons. In either case, no information shall be released unless:

1. The biological parents have been given notice by the Court of a petition for release of information, or notice of intent to issue such information has been published in a local newspaper of general distribution without revealing the name of the biological parent; and

2. The biological parent has [consented] in writing before the Court to the release of information, or the Court determines that the need for information is greater than the biological parent's right to privacy. The Court may refuse to divulge the biological parent's name but release other information that will not lead to the discovery of the parent's name.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; Special Note: the version from which this was transcribed used the word "consenting" at Subsection-B(2), which has been modified to "[consented]" above.)

CHAPTER 13. COMPULSORY SCHOOL ATTENDANCE

§ 9-13-1. Compulsory School Attendance; Responsibility

A. Any minor who is eligible to be a qualified student for purposes of the New Mexico Public School Finance Act shall attend a public or private school. A minor shall be excused from this requirement if:

1. Exempted by Court order;
2. The minor has graduated from a high school or has successfully completed the GED exams and received a diploma;
3. The minor is at least seventeen years of age and excused by the Zuni Board of Education upon a finding he will be employed in a gainful trade or occupation or an alternative form of education sufficient for his educational needs and his parent, guardian or custodian consents; or
4. Exempted by the superintendent of schools of the district in which the minor is a resident, with the consent of the minor's parents, guardian, or custodian.

B. A minor shall attend school for the length of time during the school year established for the school.

C. The parent, guardian, or custodian is responsible for the minor's school attendance.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-13-2. Traditional Religious Participation or Healing

A student may be excused to participate in tribal religious or healing activities with the written consent of the parent, guardian, or custodian.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-13-3. School Attendance of Students who are Not Tribal Members

Minors who are not members of the Zuni Tribe may attend public or private schools under the same conditions as members of the Tribe.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-13-4. Enforcement of Attendance Law

A. Responsibility for Enforcement - The Zuni Board of Education and the governing authorities of private schools shall enforce this Chapter for students enrolled in their respective schools.

B. Procedure - To initiate enforcement, a local school board or governing representatives shall give written notice by certified mail or personal service on the child's parent, guardian or custodian and be directed to attend a meeting at the school conducted pursuant to procedures the school may establish to resolve the matter.

C. Mandatory Report - A responsible school official shall be required to report to the Social Services Department for investigation any continuing violation of the attendance law occurring after the notice and meeting required in Paragraph B. The report must provide documentation of the notice and meeting and shall be investigated as suspected minor-in-need-of-care. If the school files a petition on the matter in Court, the petition shall document compliance with the procedures of this section. The school shall provide a copy of the petition to the Social Services Department.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

CHAPTER 14. EMANCIPATION

§ 9-14-1. Requirements

The Court may declare a child emancipated either pursuant to a petition or as a dispositional alternative [if] the child:

- A. Is at least sixteen years of age at the time of filing a petition;
- B. Wishes to be free from and no longer needs parental control and protection, and understands the consequences of such decision;
- C. Demonstrates his independence from his parents in matters of care, custody and earnings through independent means and establishment of an acceptable plan for independent living; and
- D. Has evidence of agreement to emancipation from parents.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021; Special Note: the version from which this was transcribed used the word "of" at the start of this Section, which was modified to "[if]" above.)

§ 9-14-2. Procedure for Emancipation

A. Petition - A minor, at least 16 years of age may petition for a declaration of full or partial emancipation. The petition shall be verified and shall state specific facts which will support a declaration of emancipation.

B. Notice - Before the petition is heard, notice shall be given to the minor's parent(s), guardian or custodian.

C. Findings - If the Court finds the requirements of Section 9-14-1 are met, it may grant all or part of the petition and issue a declaration of emancipation, unless, after having considered all evidence, it finds that emancipation is not in the best interest of the child.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

CHAPTER 15. ESTABLISHMENT OF PARENTAGE AND SUPPORT

§ 9-15-1. Child's Right to Support

The father and mother of a child, whether married or not, are jointly liable for the support of a child until he reaches 18 years of age, is emancipated, or their parental rights are severed. Notwithstanding the foregoing, the father and mother of a child may be liable for claims of restitution brought within the applicable claims period after the child reaches 18 years of age.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-15-2. Establishing Parentage

The parentage of a child may be established by:

A. A written acknowledgment filed with the Court by a parent that he is the father or she is the mother of the child; or

B. A judicial determination by the Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-15-3 Proceedings to Establish Parentage and Compel Support

Proceedings to establish parentage shall be brought under the authority and provisions of the Zuni Paternity and Child Support Enforcement Act.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

CHAPTER 16. APPEALS

§ 9-16-1. Procedure

An appeal to the Tribal Appellate Court may be taken from any order or judgment of the Children's Court. Such appeal shall be taken in the same manner and time period in which appeals are taken from judgments or orders of the Tribal Court. The name of the child shall not appear on the record.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

§ 9-16-2. Stay Pending Appeal

Unless the Court stays its order, an appeal shall not stay the order or judgment appealed. Where the order or judgment appealed directs a change of custody of a child, the appeal shall be heard and decided at the earliest practicable time.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976; Amended by Zuni Tribal Council Resolution No. M70-2006-Q038 on April 5, 2006; Repealed and replaced by Zuni Tribal Council Resolution No. M70-2021-P011 on February 10, 2021.)

**END OF TITLE IX. ZUNI CHILDREN'S CODE
[FEBRUARY 10, 2021, RESOLUTION NO. M70-2021-P011]**

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TITLE X. ZUNI DISTURBANCE CODE

§10-1-1. Declaration of Policy.

(1) The rights of people within the jurisdiction of the Zuni Tribe to freedom of religion, freedom of speech and to peaceably assemble and to petition for a redress of grievances are recognized and such rights are not to be affected by the provisions of this Disturbance Code except to the extent that their exercise or abuse threatens the peace and welfare of the Tribe, its members, or religious organizations, or any business, enterprise or tribal or governmental agency doing business or operating within the jurisdiction of the Zuni Tribe. It is the intent of this Disturbance Code to provide policies and procedures for the handling of situations disruptive to the peace and welfare of the Tribe in a manner, which protects the interests of the Tribe, and those entitled to its protection while at the same time protecting the rights of individuals to the greatest extent possible.

(2) The provisions, including criminal penalties, of this Ordinance shall apply to all persons, whether members of the Zuni Tribe or not.

§10-1-2. Definitions.

(1) "Protected place" shall include any structure, building, facility, Kiva, shrine, ceremonial plaza, or dwelling, whether owned, leased, operated, or usually occupied by any tribal or governmental agency, office, or enterprise, or by any private business or other organization or by any individual, religious group, or family, which is either not open to the public either in whole or in part, or is open to the public only at designated dates or times or which the owner or usual occupier has a right to control access to or occupancy of.

(2) "Disruptive acts" shall include but not be limited to any of the following:

(a) Without lawful permission or authority to do so, occupying or being found in a part of a protected place, which is closed to the public and refusing to immediately leave when asked to do so by the usual occupier.

(b) Without lawful permission or authority to do so, continuing to occupy a protected place, whether lawfully entered or not, after the time such place is closed for occupancy or after being informed by the usual occupier of the protected place of the closure of the protected place to such occupancy or of revocation of permission or authority to continue such occupancy.

(c) Failing to leave the premises of or disperse from a protected place when ordered to do so by the Governor, Tribal Judge, or a Tribal Police Officer, unless a usual occupier of the protected place.

(d) Doing or threatening to do any act in a protected place, which is actually or potentially disruptive or tends to interfere with the normal activities carried on by the usual occupier of the protected place.

(e) Disturbing, injuring or destroying any property in a protected place without lawful permission or authority to do so.

(f) The use or threatened use of a firearm, explosive, or flammable material in a disruptive or unlawful manner.

- (g) The taking or keeping of any hostage or hostages.
 - (h) Committing any act, which would be an offense under the Zuni Law and Order Code.
 - (i) The committing of any of the foregoing acts at a Kiva, shrine or ceremonial plaza by a usual occupier in his official capacity when ordered or instructed to cease and desist therefore by a majority of the members of a religious group who are present.
- (3) "Public" mean the people at large.
- (4) "Usual occupier" means the individual, group, organization, agency, religious group, society, tribal or governmental office or business, or a representative of any of the foregoing, including, but not limited to, a religious leader, who, in the usual course of daily or religious events has the legal right to occupy and control the use of a structure or facility, whether privately owned or not. The usual occupier of a structure or facility, which is open to the public either in whole or in part, shall be deemed to be the individual, group, organization, agency, tribal or government office or business, which has or exercises general supervision, control and/or maintenance of such structure or facility.
- (5) "Tribe" or "tribal" shall refer to the Zuni Tribe.

§10-1-3. Prohibited Acts.

- (1) It shall be a Class B criminal offense for a person to commit any of the acts or failures to act specified herein.
- (2) Any person who, either alone or with one or more other persons, by an act or failure to act, commits a disruptive act in a protected place shall be guilty of an offense.
- (3) It shall be a defense to a prosecution for an offense defined under this Disturbance Code for a defendant to show by a preponderance of the evidence, corroborated by the testimony of at least one other person or other credible corroboration, that the defendant withdrew immediately from participation in any disruptive act upon being ordered or requested to do so by the usual occupier of the premises involved or by the Governor, Tribal Judge, or a Tribal Police Officer, and such withdrawal occurred before there had been either any property damage in or to the protected place and/or significant interference with the operation or customary use of the protected place. Such a showing will not necessarily constitute a defense to any offense, which may have been committed under any other provision of Tribal law.

§10-1-4. Enforcement.

- (1) The Tribal Police, including officers of the Bureau of Indian Affairs, shall have full authority to enforce the provisions of this Ordinance by arrest or otherwise.
- (2) The Tribal Police, including officers of the Bureau of Indian Affairs, shall have authority to enter any protected place for the purpose of arresting and/or removing any persons found therein who are or reasonably appear to be engaged in committing any disruptive acts under anyone or more of the following conditions:

(a) In any circumstance under which entry and arrest would be proper under existing law, including but not limited to the making of arrests and/or searches and seizures with or without a warrant.

(b) Entry into a protected place may be made at the request or with the permission of the usual occupier of a protected place and arrest and/or removal may be accomplished upon such person's verbal complaint that the persons found therein are or have committed disruptive acts.

(c) Entry into and arrest and/or removal from any protected place open to the public may be made without the prior permission of the usual occupier if it reasonably appears that disruptive acts are being committed therein.

(3) No removal from a protected place for which an arrest has not previously been made shall be made by the use of force unless the persons apparently committing the disruptive acts are first given the opportunity to leave the protected place without the use of force, or unless there is a serious and immediate threat of either personal harm or injury resulting to any person, or damage to property, or both. The use of force under this Disturbance Code, when otherwise permissible, shall be such as is not likely to cause death or serious bodily injury.

§10-1-5. Other Code Provisions.

(1) The provisions and penalties of this Disturbance Code apply in addition to, and not instead of, any other provisions of any Code or Ordinance of the Tribe.

(2) The commission of any disruptive act in a protected place by a non-member of the Tribe shall be grounds for exclusion and removal of such non-member under the provisions of the Zuni Exclusion and Removal Code, whether a charge under this Disturbance Code has been made or not.

§10-1-6. Jurisdiction.

The Zuni Tribal Courts shall have jurisdiction over all offenses committed hereunder by any person, whether Indian or non-Indian.

END OF TITLE X. ZUNI DISTURBANCE CODE

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TITLE XI. ZUNI DOMESTIC RELATIONS CODE

CHAPTER 1. MARRIAGE

§11-1-1. Marriage License.

(1) No marriage shall be performed under authority of this Code unless the parties have first obtained a marriage license from the Clerk of the Zuni Tribal Court.

(2) Upon payment of a \$2.00 fee, the Clerk shall issue a marriage license to persons who appear entitled to be married as provided in this Domestic Relations Code.

(3) The Clerk shall keep a record of all marriage licenses and certificates issued.

(4) The marriage license, properly endorsed by the person performing the marriage, shall be returned to the Clerk who shall issue a marriage certificate to the parties.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-1-2. Existing Marriages.

(1) All marriages performed other than as provided for in this Domestic Relations Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Zuni Tribe.

(2) All marriages performed on the Reservation prior to the effective date of this Code, including those perfected according to Tribal custom, are declared valid for all purposes under this Code. Parties to such marriages may obtain a marriage certificate upon proof to the Clerk by affidavit or otherwise of the validity of their marriage, and payment of a \$10.00 fee.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-1-3. Persons Who May Marry.

No marriage license shall be issued or marriage performed unless the persons to be married meet the following qualifications:

(1) he is at least 14 years old and, if over 14 years of age but less than 18 years of age, has the written consent of his parent or guardian, properly notarized, to marry;

(2) at least one of the persons to be married is an enrolled member of the Zuni Tribe;

(3) he has obtained a blood test to detect venereal disease within 30 days prior to the marriage and such test results were negative. A certificate of the test results shall be presented to the Clerk before any license is issued.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also 2/22/1995 Administrative Order (In the Matter of Blood Test Requirement - Marriage Licenses).)

§11-1-4. Who May Perform Marriages.

(1) A marriage may be solemnized on the Reservation by any of the following:

(a) recognized clergyman or person recognized by his religion as having authority to marry; having authority to marry.

(b) a judge of the Tribal Court;

(c) the Governor of the Pueblo of Zuni;

(d) any person recognized by New Mexico State law as having authority to marry.

(2) No marriage solemnized before any person professing to have authority to marry shall be invalid for want of such authority, if consummated in the belief of the parties or either of them that he had such authority and that they have been lawfully married.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-1-5. Marriage Ceremony.

No particular form of marriage ceremony is required, provided, however, that the persons to be married must declare in the presence of the person performing the ceremony, that they take each other as husband and wife, and he must thereafter declare them to be husband and wife.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-1-6. Void and Voidable Marriages.

(1) Marriages between an ancestor and his descendant, between brothers and sisters, of the half as well as the whole blood, between an uncle and his niece or an aunt and her nephew, or between first cousins are void from the beginning, whether or not the degree of relationship is legitimate or illegitimate.

(2) Marriages between a person who is at the time of the marriage married to another person, still living are void; provided, however, that such marriages will be considered valid until ruled otherwise by a court of competent jurisdiction if the party previously married:

(a) actually believed in good faith that the prior marriage had been dissolved as a result of divorce or annulment; or

(b) actually believed, in good faith, that his prior spouse is dead.

(3) When a marriage is contracted in good faith and in the belief that it is a valid marriage, the issue of such marriage born or conceived prior to the voiding or receiving notice of the invalidity of the marriage for any reason shall be the legitimate issue of both parents.

(4) If either party to a marriage is incapable as a result of some physical cause to enter into the marital state and such cause appears to be permanent, or if the consent of either party to marry was obtained by force or fraud, the marriage is voidable.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

CHAPTER 2. ANNULMENT

§11-2-1. Grounds for Annulment.

A marriage may be annulled for any of the following causes existing at the time of marriage:

(1) That the party in whose behalf it is sought to have the marriage annulled, was under the age of 18 years, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her, unless, after attaining the age of consent, such party freely cohabits with the other as husband or wife;

(2) That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

(3) That either party was of unsound mind, unless such party, after coming into reason, freely [cohabits] with the other as husband or wife;

(4) That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely [cohabits] with the other as husband or wife;

(5) That the consent of either party was obtained by force, unless such party afterwards freely [cohabits] with the other as husband or wife; or

(6) Impotence, which continues and appears to be incurable.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the word "cohabitation" at Subsection-3, which has been modified to "[cohabits]" above, for consistency with the language in Subsection-1; the same modification was made in Subsection-4 and Subsection-5, for the same reason.)

§11-2-2. Action to Annul - Parties and Limitations.

An action to obtain a decree of annulment of a marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

(1) [For] or causes mentioned in Subsection 1, by the party to the marriage who was married under the age of legal consent, within two years after arriving at the age of consent, or by a parent, guardian, or other person having charge of such minor male or female, at any time before such married minor has arrived at the age of legal consent;

(2) For causes mentioned in Subsection 2 by either party during the life of the other, or by such former husband or wife;

(3) For causes mentioned in Subsection 3 by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;

(4) For causes mentioned in Subsection 4 by the party injured, within two years after the discovery of the facts constituting a fraud;

(5) For causes mentioned in Subsection 5 by the injured party, within four years after the marriage;

(6) For causes mentioned in Subsection 6 by the injured party, within two years after the marriage.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed was missing the capital-F and started Subsection-1 as "or" which has been modified to "[For]" above.)

§11-2-3. Legitimacy of Children.

When a marriage is annulled for any reason, other than for fraud in that the wife is pregnant with a child from a man other than the husband, children begotten before judgment are legitimate and succeed to the estate of both parents. The Court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances and surroundings of the parents may require.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-2-4. Conclusiveness of Judgment of Annulment.

A judgment of annulment of a marriage is conclusive only as against the parties to the action and those claiming under them.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

CHAPTER 3. DIVORCE

§11-3-1. Divorce and Annulment Procedure.

Proceedings in divorce and annulment shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided. A final decree of divorce shall restore the parties to the status of unmarried persons.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-3-2. Divorce and Annulment Residency Requirement.

In order to maintain an action for divorce or annulment in the Tribal Court, at least one party to the marriage must be an enrolled member of the Tribe and have lived within the territorial jurisdiction of the Tribal Court for at least three months prior to bringing the action,

except that an annulment may be granted where either party lives within the jurisdiction of the Court and the marriage was performed under authority of this Code.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-3-3. Grounds for Divorce.

A divorce may be granted for any of the following causes:

- (1) Impotency of the defendant at the time of the marriage where such impotency continues to the time of commencement of the action;
- (2) Adultery committed by the defendant subsequent to marriage;
- (3) Willful desertion of the plaintiff by the defendant for more than one year;
- (4) Willful neglect of the defendant to provide for the plaintiff the common necessities of life for a period of six months;
- (5) Habitual drunkenness or drug incapacitation of the defendant for a period of at least one year;
- (6) Conviction of the defendant of a Class A offense under this Law and Order Code, or of a felony in any other court;
- (7) Cruel treatment of the plaintiff by the defendant to the extent of causing bodily injury or great mental distress to the plaintiff;
- (8) When the parties have lived apart without cohabitation for a period of three consecutive years either voluntarily or under a decree of separate maintenance;
- (9) Permanent insanity of the defendant; provided, however, that no divorce shall be granted on this ground unless the defendant has been duly and regularly adjudged insane by a court of competent jurisdiction and such insanity reasonably appears to be permanent; further, no divorce shall be granted unless a guardian ad litem has been appointed to represent the defendant in the divorce proceedings.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-3-4. Limitations.

A divorce must be denied:

- (1) when the cause is adultery and the injured party does not commence the action within one year after its discovery,
- (2) when the cause is conviction of an offense and the action is not commenced before the expiration of one year after a pardon or the termination of the period of sentence, or

(3) in all cases when there is unreasonable lapse of time before the commencement of the action, or two years have passed since the grounds became or should have become known to the complaining party.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-3-5. Right of Husband to Divorce.

The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the may obtain a divorce from her husband.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-3-6. Temporary Alimony and Suit Money; Restraint.

(1) The court may order either party to pay to the clerk for the benefit of the other party a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute and defend the action.

(2) The court may restrain either party from doing certain acts harmful to the other or to the children, or to the property of either, during the pendency of the divorce proceedings.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-3-7. Pleadings; Findings; Decree.

The complaint shall be in writing and signed by the plaintiff or the plaintiff's counsel or attorney. No decree of divorce shall be granted upon default or otherwise, except upon legal evidence taken in the cause by the Court who shall make and file its findings and decree upon the evidence. The decree shall become absolute upon entry unless the judge orders otherwise in which case the period of time until which it becomes absolute may be up to three months.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-3-8. Disposition of Property and Children.

When a decree of divorce is made, the court may make such orders in relation to the children, property and parties, and the maintenance of the parties and children by alimony and child support, as may be equitable. Subsequent changes or new orders may be made by the court with respect to the custody of the children or the distribution of property as shall be reasonable and proper.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also Ramone v. Zuni Children's Court, 23 SWITCA Rep. 20 (2012) (A temporary custody order is not a final order for appellate purposes; Until a final custody order is issued denying contact between a parent and child, the appellate court cannot determine whether liberties have been restrained and therefore whether the extraordinary writ of habeas

corpus is an appropriate remedy; Conditions of custody and/or visitation may be inconvenient, but the inconvenience does not rise to the level of restraint necessary to issue an extraordinary writ; A restraint of liberty exists once there is an exhaustion of tribal remedies and there are no options or opportunities to remedy the restraint; As long as tribal remedies are available within a reasonable time frame, the restraint, while frustrating and hurtful, has the chance of being remedied); see also 3/05/1997 Administrative Order (In the Matter of Establishment of Procedures for Child Custody).)

§11-3-9. Custody of Children in Case of Separation.

In any case of separation of husband and wife having minor children, or whenever a marriage is declared void or dissolved, the court shall make such order for the future care and custody of the minor children as it may deem just and proper. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties and the natural presumption that the mother is best suited to care for young children. The court may inquire of the children and take into consideration the children's desires regarding the future custody; however, such expressed desires shall not be controlling and the court may, nevertheless, determine the children's custody otherwise.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also Ramone v. Zuni Children's Court, 23 SWITCA Rep. 20 (2012) (A temporary custody order is not a final order for appellate purposes; Until a final custody order is issued denying contact between a parent and child, the appellate court cannot determine whether liberties have been restrained and therefore whether the extraordinary writ of habeas corpus is an appropriate remedy; Conditions of custody and/or visitation may be inconvenient, but the inconvenience does not rise to the level of restraint necessary to issue an extraordinary writ; A restraint of liberty exists once there is an exhaustion of tribal remedies and there are no options or opportunities to remedy the restraint; As long as tribal remedies are available within a reasonable time frame, the restraint, while frustrating and hurtful, has the chance of being remedied); Toya v. Ramone, 23 SWITCA Rep. 3 (2012) (Zuni law creates a presumption that a mother is best suited for a child's care in custody proceedings, but it is a rebuttable presumption that may be overcome by evidence presented at trial that the mother lacks a moral standard and her past conduct conflicts with what is in the best interest of the child; Zuni law does not require any equal weighting of each party's moral standard; The Zuni Children's Code is not applicable in a custody dispute between parents and that does not involve the removal of a child from both parents by social services; In a custody proceeding, the natural parents clearly have standing, but any other parties - including grandparents or extended family - do not as they may in adoption or guardianship proceedings); In the Matter of the Custody of J.H.W., a Minor Child, 21 SWITCA Rep. 10 (2010) (The court is required to consider the best interests of a child in custody matters, but if the child is to be placed with the father, there must be sufficient evidence to overcome the presumption in favor of the mother's custody; Given that the Zuni Tribal Code requires that two standards must be met to establish physical custody, the court's records should reflect the introduction of evidence that would serve to meet those standards); see also 3/05/1997 Administrative Order (In the Matter of Establishment of Procedures for Child Custody).)

CHAPTER 4. SEPARATE MAINTENANCE AND PROPERTY RIGHTS

§11-4-1. Separate Maintenance.

(1) A wife, living on the Reservation, who through no fault of her own or by agreement with her husband, is living separate and apart from her husband, or whose husband has, deserted her, or has failed to support her when otherwise able to do so, may maintain an action for a decree of separate maintenance.

(2) During the pendency of the action the Court may order the husband to pay temporary alimony and suit money as in an action for divorce.

(3) If it appears that the wife is entitled to such, the Court shall grant a decree of separate maintenance awarding custody of children, alimony, child support and expenses of suit as may be equitable under the circumstances.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-4-2. Property Rights of Married Persons.

(1) Either a wife or a husband can obtain, own, hold, give, sell or otherwise deal with real or personal property as if they were unmarried.

(2) Either a wife or a husband can enter into contracts and sue or be sued to the same extent and in the same manner as if unmarried.

(3) Neither a wife nor a husband nor the property of either in which their spouse has no interest is liable for the debts or obligations of the other spouse solely by reason of marriage to the other spouse.

(4) A conveyance, transfer, or lien executed by either husband or wife in favor of the other shall be valid to the same extent as between other persons.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-4-3. Family Expenses.

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife or either of them, and they may be enforced jointly or separately.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-4-4. Custody of Children and Property.

(1) Absent a judicial decree of property distribution or custody or otherwise, neither the husband or the wife can remove the other or the children from the place of family dwelling without the consent of the other, provided, however, that children may be removed from the family residence by one parent without the consent of the other [if] such appears to be reasonably necessary to protect the physical well-being of the children, the children are

thereafter provided with a more proper living environment, and application is made to the Court within ten days for an order of the court, modifiable at any time, approving such removal of the children.

(2) If a husband abandons his wife, the wife is entitled to custody of all children under the age of 16 unless a court of competent jurisdiction shall otherwise direct.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also Ramone v. Zuni Children's Court, 23 SWITCA Rep. 20 (2012) (A temporary custody order is not a final order for appellate purposes; Until a final custody order is issued denying contact between a parent and child, the appellate court cannot determine whether liberties have been restrained and therefore whether the extraordinary writ of habeas corpus is an appropriate remedy; Conditions of custody and/or visitation may be inconvenient, but the inconvenience does not rise to the level of restraint necessary to issue an extraordinary writ; A restraint of liberty exists once there is an exhaustion of tribal remedies and there are no options or opportunities to remedy the restraint; As long as tribal remedies are available within a reasonable time frame, the restraint, while frustrating and hurtful, has the chance of being remedied); see also 3/05/1997 Administrative Order (In the Matter of Establishment of Procedures for Child Custody); Special Note: in the version from which this was transcribed, the word "if" was missing from Subsection-1, which has been added in as "[if]" above.)

CHAPTER 5: ADOPTION

§11-5-1. Jurisdiction Over Adoption.

The Juvenile Division of the Tribal Court shall have full original jurisdiction in adoption matters where the person to be adopted is the child of at least one Indian parent and the child lives within the Reservation or has been placed outside the [Reservation] by order of the Juvenile Division.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed spelled the word "Reservation" as-such, which has been modified to "[Reservation]" above.)

§11-5-2. Who May Adopt.

(1) Any minor child subject to the jurisdiction of the Tribal Court may be adopted by any adult person, Indian or non-Indian as hereinafter provided.

(2) Any person whose parents are both dead may be adopted by an adult person, as hereinafter provided.

(3) A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife, nor can a married woman, not lawfully separated from her husband, adopt a child without the consent of her husband, if the spouse not consenting is legally capable of giving such consent.

(4) A person adopting a child must be at least 10 years older than the child adopted.

(5) In any adoption involving an Indian child, preference shall be given to Indian adoptive parents, and as between Indian adoptive parents, preference shall be given to residents of the Zuni Reservation. In all cases the welfare of the child shall be the primary consideration.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-5-3. Consent to Adopt.

(1) No consent to adoption shall be required from a parent or parents whose parental rights have been terminated by a court of competent jurisdiction.

(2) A legitimate child cannot be adopted without the consent of both parents, if living, provided, however, that the court can allow the adoption of a legitimate child without the consent of a parent whose whereabouts are unknown after a reasonable search and who has deserted the family for a period of two years without in that time ever contacting the family.

(3) An illegitimate child cannot be adopted without the consent of its mother, if living.

(4) A child deserted by its parents or surviving parent and having no legal guardian may be adopted without the consent of [his] parents upon a finding by the Court that the child has in fact been deserted and that the identity of the parents is unknown after reasonable investigation.

(5) The consent of a child over the age of twelve years is necessary to its adoption.

(6) A child who has a guardian of its person other than a parent cannot be adopted without the consent of such guardian, provided, however, that an adoption of such a child may be accomplished without such consent if the court finds that the adoption will be in the child's best interest.

(7) Consent of a parent shall be taken by the court and shall be accomplished by signing a consent form to be provided by the court, which explains the consequences of consenting to the adoption. For parents residing outside the Reservation, the consent form shall be executed before a Notary Public who shall certify that the consent of the parent appears to be freely given.

(8) A consent to adoption may be withdrawn only prior to the entry of an Order of Adoption, and only upon permission of the Court for the reason that the best interests of the child will be served by such withdrawal.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the phrase "consent of is parents" in Subsection-4, which has been modified to "consent of [his] parents" above, and "his" was used instead of "its" because the Code predominantly uses the masculine pronoun.)

§11-5-4. Petition to Adopt.

A person or persons wishing to adopt a child through the Tribal Court shall file a petition, verified under oath, which shall contain the following information:

- (1) The full names, address, and ages of the adopting parents, plus the names and ages of all other children living in their household, if any;
- (2) The full name, residence, sex and birth date of [the] child whose adoption is sought, plus documentary proof of the child's date and place of birth, if available;
- (3) Proof of parental or guardian's consent to the adoption or the termination of the natural parent's or parental rights or of the deserted status of the child, as is appropriate;
- (4) A full description and statement of value of all property owned or possessed by the child;
- (5) A statement by the adopting parents that it is their desire to adopt the child, and to establish the relation of parent and child with the adopted child, and that they will protect and care for the child to the best of their ability if the adoption is granted.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed misspelled the word "teh" in Subsection-2, which has been modified to "[the]" above.)

§11-5-5. Investigation Report.

After the filing of the petition for adoption, the Court may request the assistance of Tribal, Federal, or state officials or agencies to inquire into and report in writing to the Court on the suitability of the child for adoption, and the financial, moral, physical fitness and general background of the adoptive parents and their home, together with a recommendation regarding the proposed adoption.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-5-6. Adoption Hearing.

Within five days after the written investigation report is received or within a reasonable time, the Court shall fix a time for hearing on the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall be duly notified if possible and may appear or be represented by a spokesman authorized to represent them for the purpose of adoption. The Judge shall examine all persons appearing separately, and if satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interests of the child will be promoted by the adoption, may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period of not more than six months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption petition will not be in the best interests of the child, the petition shall be denied and the child's guardian instructed to arrange suitable care for the child, and the Court may request the Tribal agencies, Federal agencies, or other agencies authorized to provide such services to assist in the placement and care of the child.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-5-7. Report and Final Decree of Adoption.

If the Court does not enter a final Decree of Adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final Decree of Adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child. In any case where the Court finds that the best interests of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the court may request Tribal agencies or Federal agencies or other agencies authorized to provide such services to assist in the placement and care of the child.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-5-8. Adoption Records.

All records, reports, proceedings, and orders in adoption cases are confidential and permanent records of the court shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the Court by the adopted person after reaching legal majority, or otherwise upon order of the Court upon good and sufficient cause shown.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-5-9. Contents of Adoption Order.

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the court upon the evidence adduced at the hearings. Within five days after the final decree of adoption [has] been entered by the Court, the appropriate agency of the State of New Mexico shall be notified by the Clerk of the Court that the adoption has taken place, giving the full name, sex, birth date, names of natural parent(s) and full names of adoptive parent(s) so that a new record of birth in the new name and with the name or names of the adopting parents is recorded, and provided with a certified true and correct copy of the final decree of adoption.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed misspelled the word "ahs", which has been modified to "[has]" above.)

§11-5-10. Name and Legal Status of Adopted Child.

Minor children adopted by order of court shall assume the surname of the persons by whom they are adopted, unless the court orders otherwise, and shall be entitled to the same rights of persons and property as children or heirs of the [persons] adopting them. Adoption shall not affect Tribal membership status or any rights incident thereto.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed misspelled the word "per sons" which has been modified to "[persons]" above.)

§11-5-11. Rights and Liabilities of Natural Parents.

The natural parents of an adopted child are, from the time of the final decree of adoption, relieved of all parental duties toward, and all responsibility for the child so adopted, and shall have no further rights over him.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

CHAPTER 6. GUARDIANSHIP

§11-6-1. Jurisdiction.

(1) The Tribal Court shall have authority, whenever it appears necessary or convenient, to appoint guardians for the persons and/or the estates, or for the purpose of actual or contemplated litigation (guardian ad litem) of either minors or persons incompetent by reason of physical or mental sickness or deficiency, advanced age, or chronic use of drugs or alcohol.

(2) The Tribal Court shall have authority to appoint guardians when the person for whom the guardianship is sought is a member of the Tribe or the child of a member of the Tribe, whether or not he lives on the Reservation.

(3) The Tribal Court may, in its discretion, refer matters concerning the guardianship of a minor to the Juvenile Division.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-6-2. Appointment of Guardian in Connection With Probating an Estate.

(1) The Court may, in the process of administering an estate for which there is a valid will containing a designation of a guardian for minor children if orphaned by the deceased's death, appoint the person therein designated as guardian of the minors involved without the necessity of a separate guardianship hearing.

(2) If the person so designated is unable or unwilling to serve, or if such person's appointment is objected to by any child over 14 years of age, or if the Court deems such to be in the minor's best interest, a separate guardianship hearing shall be held as provided herein.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-6-3. Petition.

(1) Except as provided in the preceding section, guardianship proceedings shall be initiated by the filing of a petition by a relative or other person on behalf of the minor or incompetent, or by a minor himself if over 14 years of age. The Court may initiate proceedings to appoint a guardian if such appointment reasonably appears necessary and no other person has initiated such proceedings.

(2) The petition shall set forth the name of the petitioner; the petitioner's relationship to the minor or incompetent shall list all known relatives of the minor or incompetent and their addresses, relationships and ages insofar as is known to petitioner; shall list all property of the minor or incompetent, real and personal, known to petitioner; shall list in detail the present conditions and circumstances which warrant the appointment of a guardian; shall pray that Letters of Guardianship be issued to himself or some other suitable person to act as guardian of the minor or incompetent.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-6-4. Notice; Hearing.

(1) The petitioner, or the Clerk of the Court, if a minor or the Court itself initiates the proceeding, shall cause notice of the hearing to be given by mail or personal service to all known interested persons listed on the petition not less than five days before a scheduled hearing. Such notice need not be given in the case of a minor whose parents appear and consent to waive such notice prior to the hearing or in the case of an adult where the spouse and children living on the Reservation appear and waive such notice. An appearance and waiver may be made personally or by affidavit to the Court.

(2) Hearing for minor. At a hearing conducted to appoint a guardian for a minor, the Court shall: examine the petition; determine the need to have a guardian appointed; examine the minor (if over 14 years of age) to determine who he would prefer to have as his guardian; determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such; and make an order appointing a guardian, setting forth the scope of the guardian's authority, whether or not security for his performance is to be required, and the duration of such appointment.

(3) Hearing for incompetent. At a hearing conducted to appoint a guardian for an incompetent, the Court shall: examine the petition; determine the need to have a guardian appointed by taking such testimony as any interested party wishes to present, but including not less than two doctors' reports, written or oral, under oath, to the effect that the incompetent is not presently able to handle his property or affairs, the anticipated duration of the incapacity, and that the best interests of the incompetent will be served by having a guardian appointed; determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such; and make an order appointing a guardian, setting forth the authority of the guardian, whether or not security for his performance is to be required, and the duration of such appointment.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-6-5. Who May Serve As Guardian.

Any adult person 21 years of age or older and subject to the jurisdiction of the Tribal Court may serve as a guardian. Preference shall be given to relatives of the minor or incompetent in order of their closeness of relationship and some preference shall also be given to a person with whom the minor or incompetent is living at the time of the guardianship hearing. Preference shall be given to the person preferred to act as his guardian by a minor or incompetent over 14 years of age, but in all cases, the Court shall determine the best interests of the minor or incompetent in selecting a guardian.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-6-6. Security for Faithful Performance of Duties.

The Court may, but need not, require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of the guardian's duties. Any surety of any such security will be deemed to have consented to the jurisdiction of the Tribal Court for purposes of action against such security.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-6-7. Oath; Letters of Guardianship.

(1) The guardian appointed by the Court shall be required to take an oath, the form of which to be prescribed by the court, to the effect that he will faithfully perform his duties as guardian.

(2) Upon taking the oath and filing with the Court such security, if any, as may have been required, the guardian shall be issued Letters of Guardianship, issued by the Clerk under the seal of the Court, as evidence of his appointment. Any limitations in the authority of the guardian shall be set forth on the Letters so issued.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-6-8. Inventory and Appraisement.

(1) Within 45 days after the appointment of a general guardian or guardian of the property or estate of a minor or incompetent, the guardian shall prepare and submit to the Court an inventory and appraisement of the estate.

(2) The appraisement shall be made by three disinterested persons who shall certify under oath to their appraisement and may receive reasonable compensation for their services.

(3) No appraisement shall be required of items of obvious, readily ascertainable value; e.g. bank account assets, or where the value of the estate is reasonably believed by the guardian to be less than \$1,000.00. If no appraisement is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-6-9. Annual Accounting.

(1) The guardian of every estate in value over \$1,000.00 shall submit an annual account of the estate to the court for approval, on such notice as the court may direct, in each year in which the value of the estate is or is reasonably believed to be in excess of \$1,000.00.

(2) Such account shall be verified on the oath of the Guardian and shall contain an accounting of all additions to and withdrawals from the estate, and shall be accompanied by supporting [canceled] checks, vouchers, receipts, statements, etc.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; Special Note: the version from which this was transcribed used the word "cancelled" at Subsection-2 has been modified to "[canceled]".)

§11-6-10. Guardian's Compensation.

(1) No guardian shall receive any compensation for acting as such without the prior approval of the Court.

(2) The guardian of an estate in excess of \$1,000.00 in value may receive annual compensation for neither acting as such in amount not less than \$25.00 nor greater than 10% of the gross income of the estate.

(3) The guardian of an estate less than \$1,000.00 in value shall receive no compensation unless specifically ordered by the Court for extraordinary service to the estate.

(4) The right to receive compensation as guardian of an estate shall be deemed waived for any year in which such is not requested and received.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-6-11. Powers and Responsibilities of Guardian.

(1) Except as otherwise specifically ordered or limited by the Court:

(a) A guardian of the person of a minor or incompetent shall have the right to take or provide for the custody of the person of the minor or incompetent and shall be required to care for the health, safety and welfare of such minor or incompetent and provide for their education and medical care as needed or appropriate.

(b) A general guardian or guardian of the estate or property of a minor or incompetent shall have authority to invest, manage and dispose of the property of the minor or incompetent in a prudent and reasonable manner and expend such portions of the estate, income and then principle, as he shall deem reasonably necessary for the support, care, including medical care, and education of the minor or incompetent given the size and nature of the estate and the station in life and needs of the minor or incompetent.

(c) A guardian ad litem shall have power and authority to represent a minor or incompetent's best interests in actual, threatened or contemplated litigation or other proceedings of a legal nature (other than of a criminal nature and/or under the Juvenile Code), and to employ counsel, and settle or compromise suits or claims, subject to the approval of the Court.

(2) A guardian of any kind may petition the court for authority to do any act about which he is uncertain of his authority, and the Court may grant such authority, after such notice and hearing, if any, as the Court may direct, if such appears to be consistent with the best interests of the minor or incompetent.

(3) A guardian of any kind shall stand in a fiduciary relationship to the minor or incompetent ward; shall exercise a high degree of care in managing the estate of his ward; shall derive no personal benefit of any kind from his management of the estate of his ward; and shall be civilly liable to said ward for any losses to the estate attributable to a breach of these duties. Action to enforce such liability may be brought by the ward or a subsequently appointed guardian on behalf of the ward within two years after the appointment of a new guardian or the removal of the in competency or the arriving at the age of majority.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-6-12. Discharge of Guardian.

(1) Every guardian appointed as provided herein shall serve until discharged by the Court.

(2) A guardian of a minor, not otherwise incompetent, or the minor himself, may petition the Court on or after the date the minor reaches the age of majority to have the guardian discharged and the estate turned over to the minor. The Court shall grant such discharge with or without notice and hearing, upon the receipt of sufficient, competent evidence that the minor has reached the age of majority unless the minor appears to be otherwise incompetent, in which case a hearing shall be held to determine such fact.

(3) A person, other than a minor, who has had a guardian appointed for reasons of incompetence, or the guardian or a relative of such incompetent may petition the Court for a determination of his restoration to capacity and for the discharge of the guardian. The Court shall hold a hearing, after such notice to known interested persons as the Court shall direct, and receive evidence, both of a medical nature and otherwise, of the ward's competency. If it be found that the ward is of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged and his guardianship and guardian discharged.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-6-13. Guardianship Records.

The Clerk shall keep a separate, permanent file for each guardianship proceeding and shall file all papers relevant thereto, including petitions, notices, orders for hearings, etc. Any guardian duly appointed shall be entitled to receive, without charge, three certified copies of the Letters of Guardianship. Certified copies of filed papers shall be otherwise available at a fee per copy to be established by the Court.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also 4/27/1992 Administrative Order (Regarding Fees for Court Records and Tape Recordings of Court Hearings).)

§11-6-14. Guardianship of Trust Property.

The Court is hereby authorized to appoint a Guardian of the trust estate of minors or incompetents using the procedures and safeguards outlined herein for the purpose of conveying or consenting to the conveyance of an interest in trust property owned by such minor or incompetent if it appears that the price to be paid is reasonable and adequate and that such sale is to the best interest of said minor or incompetent, the Court may enter an order authorizing such action. All actions taken by such guardian consenting to or conveying trust property shall be subject to the approval of the Superintendent.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976.)

§11-6-15. Temporary Guardianship and Custody.

The Court shall have the power to entertain and grant or deny petitions for temporary guardianship and custody when it determines it to be in the best interest of the child involved.

(Annotations: Enacted by Zuni Tribal Council Ordinance No. 22 on December 20, 1976, effective November 15, 1976; see also In the Matter of a Minor Child, 12 SWITCA Rep. 8 (2001)) (A Temporary Guardianship is not a Final Judgment for the purposes of filing an appeal, and therefore any such appeal should be dismissed for lack of appellate jurisdiction; A Temporary Guardianship may qualify as a judgment for seeking an interlocutory appeal, but rules for interlocutory appeals differ from the rules for appealing a final judgment).)

CHAPTER 7. PATERNITY [December 2, 2010, Resolution No. M70-2010-C127]

§11-7-1. Paternity Proceedings; General Provisions.

A. Paternity of a child may be established as provided by this Chapter in a proceeding in the Court. A paternity proceeding may be combined with another related Court action concerning the child.

B. A paternity proceeding shall be governed by the Zuni Rules of Civil Procedure. A paternity proceeding may be commenced any time prior to the child's 18th birthday, and for an additional three-year period following the child's 18th birthday.

C. Nothing herein shall preclude an action in the Zuni Children's Court to establish paternity under the Zuni Children's Code, provided that such Children's Court action does not conflict with the provisions of this Title. A final paternity ruling in the Children's Court will be binding on this Court, if conducted in compliance with the provisions of this Title.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-7-2. Who May Initiate a Paternity Proceeding.

A. The following individuals may bring a paternity proceeding in the Court:

- (1) The adult child;
- (2) The child represented by guardian;
- (3) The mother;
- (4) The alleged father;

(5) A person who has custodial or legal responsibility for the child or for a person identified above, including a responsibility assumed through clanship or custom.

B. In addition to the individuals identified in subpart A, ZCSP shall bring a paternity action pursuant to an application for services if the paternity of the child has not been established; however, ZCSP shall not be required to initiate a paternity proceeding in a case for which there is a pending adoption or a case involving incest or rape, or the equivalent criminal offense as defined under applicable law.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-7-3. Presumption of Paternity.

A. A man is presumed to be the biological father of a child if he was married to the child's biological mother at the time of the child's conception. The presumption is overcome if, based upon all the evidence submitted in the action, the Court finds the husband is not the father of the child.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-7-4. Voluntary Acknowledgement of Paternity.

At any time prior to or during a paternity proceeding, the alleged father of a child may acknowledge paternity for a child in writing. The acknowledgement of paternity shall state the father accepts responsibility as a parent over the child. An acknowledgement of paternity may be contested in the Court on the grounds of fraud, duress, or mistake of fact. If the Court determines the man is not the father of the child, the Court shall vacate any order which was based upon the acknowledgment of paternity.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-7-5. Evidence in a Paternity Action.

A. Evidence in a paternity action may include all relevant and material evidence, subject to the rules governing the admissibility of evidence, including the following:

(1) Evidence pertaining to the relationship between the mother and alleged father, including evidence of sexual relations at any possible time of conception;

(2) Medical, scientific or genetic and statistical evidence relating to the alleged father's paternity of the child based on tests performed by experts;

(3) All other evidence relevant to the issue of paternity of the child, including evidence of traditional customs or practices which may confirm or ratify the paternity of a child.

B. The petitioner must provide to the Court a certified copy of the child's birth certificate from the jurisdiction where the child is born so that the Court is made aware of whether a father was named on the birth certificate. This requirement shall be waived by the Court if there is evidence of good reason why a certified copy of the birth certificate is not available.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-7-6. Genetic Testing.

A. The Court may order the mother, the alleged father, and the child to take genetic tests as may be necessary to make a paternity determination. Collection of genetic samples will be conducted by a qualified professional and tests shall be performed by a qualified employee of an accredited genetic testing facility.

B. The costs for genetic tests may be paid by ZCSP, by any of the parties to the case, or by both parties in the proportion and at the times the Court prescribes.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-7-7. Reporting Paternity Results.

The Court or ZCSP shall provide a report of a finding of paternity made in a paternity proceeding to the office of vital records in the state or tribal jurisdiction in which the child was born.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-7-8. Locating Custodial and Non-Custodial Parents.

ZCSP shall have authority to request information of all entities, whether commercial, private or governmental for all records which may help to identify the location of the custodial or non-custodial parents or their assets. ZCSP must attempt, and shall use all sources of information and records, to locate custodial or non-custodial parents and their assets. The Tribe is authorized and directed to provide such information when requested pursuant to the authority of this Act.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

CHAPTER 8. CHILD SUPPORT [December 2, 2010, Resolution No. M70-2010-C127]

§11-8-1. Child Support Proceedings; General Provisions.

A. An order for child support may be obtained as provided by this Chapter in a proceeding in the Court. A child support proceeding may be combined with another related Court action concerning the child.

B. A proceeding brought in the Court for child support shall be governed by the Zuni Rules of Civil Procedure. A child support proceeding may be commenced any time prior to the child's 18th birthday, and for an additional three year period following the child's 18th birthday,

and it may include retroactive relief to the date of the child's birth. Child support shall be available for the support of a child until the date that the child has completed high school and attained age of 18, or the date that the child has attained age 19, whichever is first.

C. Nothing in this Chapter shall preclude an action in the Zuni Children's Court under the Zuni Children's Code for support of a child, provided that such Children's Court action does not conflict with the provisions of this Title. A child support ruling in the Children's Court will be binding on this Court, if conducted in compliance with the provisions of this Title.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-8-2. Who May Bring an Action for Child Support.

A child support action may be brought by a parent or any other person or entity having custody or legal responsibility for the child for whom the support order is sought. In addition, ZCSP may bring a child support action.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-8-3. Responsibility for Child Support.

A. The mother and father equally share in the primary responsibility for child support, subject to the circumstances of each case. If the mother or father is a minor, the parents of the minor parent shall bear the responsibility for child support until the minor parent reaches the age of adulthood, or is otherwise emancipated.

B. Subject to the circumstances of each case, any other person, agency, organization or institution may be secondarily liable for such support; provided the Court finds that such a person, agency, organization or institution has assumed the obligation of support.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-8-4. Child Support Guidelines.

A. The Court shall establish by Rule of Court child support guidelines which shall apply to all child support cases that come before Court. The Guidelines shall establish the scale of minimum child support contributions and shall be used to determine the amount the obligor must pay for support of a child.

B. The Child Support Guidelines shall, at a minimum, take into account the income of both parents and the number of children to be supported. The Guidelines shall reflect the best interests of the child and shall provide for the actual childcare expenses in an amount which is sufficient to meet the basic needs of the child for housing, clothing, food, education, health care and recreation, and which enables both parents to maintain employment or education.

C. There shall be a rebuttable presumption in any proceeding for the award of child support, that the amount of the award that results from the application of the Guidelines established pursuant to this Section is the correct amount of child support to be awarded.

D. The Guidelines may permit the use of non-cash resources for support only if the Guidelines identify the types of non-cash resources which are permitted and the specific dollar amount of the support obligation which the non-cash resources satisfy.

E. To assist the Court and the ZCSP in identifying and recognizing the value of cultural practices and obligations in establishing support obligations, the Tribe establishes a Cultural Advisory Panel, consisting of members of the Tribe selected by the Tribal Council who are recognized for their knowledge of Ashiwi culture and tradition. The Panel shall meet not less than annually to review the recognition of cultural practices under this Act and to be available as may be needed as a resource for the Court and the ZCSP.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-8-5. Child Support Order.

A. A support order issued by the Court shall be enforced as provided in this Chapter and as permitted under Tribal law. Each support order shall include provisions as deemed appropriate by the Court to ensure the well-being of the child. Payments ordered for the support of the child shall be in such amount as to meet the reasonable needs of the child, as established under the Child Support Guidelines, with regard for the facts of the particular case.

B. In a child support action the Court shall require each party to furnish, on standard forms, full disclosure of all respective earnings, income and assets owned by either party separately or jointly with other persons.

C. Upon request by a party, the Court may deviate from the amount of child support payments which would be required under the Child Support Guidelines if, after considering all of the circumstances of the case, the Court finds that use of the Guidelines is unfair to the child or to any of the parties and the Court identifies the amount that would be required under the Guidelines and states the justification for the variance from the Guidelines. This Section does not prohibit or limit the Court from entering a child support order that is agreed to by the parties that deviates from the Child Support Guidelines.

D. The obligation for child support payments shall terminate without further order of the Court at the time the child reaches the age of emancipation. If an arrearage for child support or fees or costs exists at the time a child support obligation terminates, payments shall continue in the same amount and be applied to the arrearage until all arrearages and fees or costs are satisfied or until further order of the Court. The Court shall not charge interest on child support arrears or judgments.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-8-6. Voluntary Agreement.

The parents may enter into a voluntary child support agreement subject to conditions and limitations the Court may impose.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-8-7. Assignment of Child Support Rights.

A party who receives TANF benefits may be required to assign accrued child support rights for the TANF benefits to the tribal or state agency which issued the TANF payments. The assignment of rights shall authorize ZCSP to bring an action in the Court to establish paternity or a support order and to collect on that order on behalf of the tribe or state expending the TANF benefits and to distribute monies collected to such tribe or state.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-8-8. Income Withholding. [Amended April 7, 2014, Resolution No. M70-2014-0037]

A. An income withholding order shall be utilized to order the payment of income of the obligor to the obligee or the obligee's designee or assignee, as may be necessary to comply with the order for support. The withholding shall be an amount sufficient to ensure payment under the support order and shall not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b) and as amended). The Court is authorized to enter and to enforce an order to withhold income to insure the timely and consistent payment of child support. Income shall not be subject to withholding if either the custodial or non-custodial parent demonstrates there is good cause not to require income withholding, and the Court enters a finding of such good cause, or there is a signed written agreement between the custodial and non-custodial parent which provides for an alternate arrangement and it is entered into the record by the Court. "Good cause" is defined in this section as: fluctuation of pay resulting in decrease of 50% or more from one pay period to the next, seasonal employment (e.g. firefighting) or temporary employment not exceeding three (3) months, medical emergency of obligee or obligee's dependents, or other situations that can be submitted to the Court as evidence for good cause. Immediate income withholding shall take place upon employment verification by either the non-custodial parent's last three payroll statements or from an employment verification conducted by the Zuni Child Support Program at the establishment of the child support order or any modification thereof.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010;
Repealed and Replaced by Tribal Council Resolution No. M70-2014-0037 on April 7, 2014.)

§11-8-9. Enforcement of Child Support Orders. [Amended April 7, 2014, Resolution No. M70-2014- 0037]

In addition to the income withholding order, the Court or ZCSP may utilize any and all enforcement remedies available to enforce the payment of obligations under a support order, including, but not limited to: 1) certification for the intercept of the obligor's federal and/or state tax refunds, if applicable; 2) certification and application for the intercept of any worker's compensation or unemployment insurance benefits owed to the obligor; 3) certification and application for any other collection methods available and appropriate including, but not limited to, liens against real or personal property, seizure of bank accounts, suspension of driver's licenses, hunting and fishing licenses and professional licenses; 4) submission of the obligor's name to credit bureaus and 5) interest, not to exceed 6%, be assessed and applied to accrued arrearages when the obligor fails to make payment on the arrearage for three (3) non-consecutive months.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010;
Repealed and Replaced by Tribal Council Resolution No. M70-2014-0037 on April 7, 2014.)

§11-8-10. Adjustment of Child Support Orders.

A. A support order issued by the Court may be modified or vacated at any time, upon a motion and a showing of a substantial change in circumstances. A motion to modify an order may be filed by any of the obligor, the obligee, or other party to the case, or ZCSP.

B. In addition to the foregoing, not less than once every three years, ZCSP shall notify each person subject to a child support order of the right to have the order reviewed by the

Court. A review of a support order may also be completed by ZCSP upon the receipt of a written request submitted by any of the parties to the case indicating there has been a substantial change in circumstances.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

CHAPTER 9. GENERAL PROVISIONS [December 2, 2010, Resolution No. M70-2010-C127]

§11-9-1. Application; Jurisdiction; Court Rules.

A. The provisions of this Chapter 9 and Chapters 7 and 8 of this Title may be referred to as the Zuni Tribe Paternity and Child Support Enforcement Act. The provisions of the Act apply to all proceedings arising under this Title, whether or not arising from a marriage or divorce. This Act shall be interpreted to assert and maintain jurisdiction to the full extent permitted under law.

B. The provisions of this Act may be supplemented by administrative Rules of Court, enacted pursuant to Tribal law. For [purposes] of court docketing, the Court, either through Rules of Court or otherwise, may direct that a paternity or child support proceeding be initiated in the Children's Court and further that such a proceeding which is initiated in the Court be transferred to the Children's Court.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010;
Special Note: the version from which this was transcribed used the singular "purpose" at Subsection-B, which has been modified to the plural of "[purposes]" above.)

§11-9-2. Definitions.

Except as the context otherwise requires, the following definitions shall apply in this Title:

- A. "Act," means the Zuni Tribe Paternity and Child Support Enforcement Act.
- B. "Application for Services," means an application for public assistance, including TANF benefits, and which includes services for the establishment of paternity, establishment, modification, and enforcement of child support orders and location of non-custodial parents.
- C. "Assignment of Support Rights," means a legal procedure by which the person receiving assistance from a state or tribal program agrees to assign to the state or tribal program the support rights owed by an obligor.
- D. "Child," means a person under 18 years of age. As used in this Act, the term means child who is the subject of a paternity proceeding or child support proceeding or order.
- E. "Child Support Guidelines" or "Guidelines," means guidelines which establish the support obligation for a child.
- F. "Child Support Order" or "Child Support Obligation," means a judgment, decree, or order, whether temporary, final or subject to modification issued by the Court for the support and maintenance of a child, in accordance with the Act, including a child who has reached the age of majority.
- G. "Child Support Proceeding" or "Child Support Action," means a legal action in the Court to establish, modify, or enforce a support order.

H. "Children's Court," means the Zuni Tribe Children's Court. For a proceeding under the Act, the Children's Court shall exercise the authority and responsibility of the Court, as provided under this Act.

I. "Court," means the Zuni Tribal Court.

J. "Income," means any periodic form of payment due to an individual regardless of source, and including per capita payments, trust funds and Individual Indian Monies.

K. "Minor," means a person who is under 18 years of age.

L. "Obligee," means a person or agency entitled to receive support.

M. "Obligor," means a person obligated to pay support.

N. "Paternity ," means the male parentage of a child.

O. "Paternity Proceeding" or "Paternity Action," means a proceeding in the Court to establish paternity.

P. "Program," means the Zuni Child Support Program.

Q. "Support," means the provision of maintenance or subsistence for a child, including medical coverage and arrearages, past support and reimbursement for public assistance.

R. "TANF," means the Temporary Assistance for Needy Families program, which provides cash benefits to eligible families as authorized pursuant to section 401 *et. seq.* of the Social Security Act.

S. "Tribe," means the Zuni Tribe, also known as the Pueblo of Zuni.

T. "ZCSP," means the Zuni Child Support Program, which is the Zuni Tribe's Title IV-D Agency.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-9-3. Establishment of Zuni Child Support Program.

There is hereby established the Zuni Child Support Program to serve as the Tribe's IV-D Agency, for purposes of Title IV-D of the Social Security Act, with authority to undertake the responsibilities under this Title of the Tribal Code.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-9-4. Full Faith and Credit.

In order for the Zuni Tribe to comply with the Full Faith and Credit For Child Support Orders Act, 28 U.S.C. § 1738B (the "Full Faith and Credit Act") and 45 CFR §309.120(b) and to fulfill the purposes of this title, the Tribe shall recognize child support orders issued by other tribes, tribal organizations and states in accordance with the requirements under the Full Faith and Credit Act. In the event that any provision law of this title is in conflict with the provisions of the Full Faith

and Credit Act, the provisions of the Full Faith and Credit Act shall control, but only with respect to the recognition of child support orders issued by other tribes, tribal organizations or states.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010.)

§11-9-5. Sovereign Immunity

To permit the enforcement of this Act, the Tribe waives its sovereign immunity from suit for the limited purpose of an income withholding order brought to the Tribe in compliance with Section 8.8 of this Act, to collect monies from wages owed to an employee of the Tribe. For this limited purpose, the relief permitted here against the Tribe is injunctive only and may be utilized only as expressly provided in Section 8.8. No other waiver of the Tribe's immunity from suit, whether express or implied, is permitted under this Act.

(Annotations: Enacted by Tribal Council Resolution No. M70-2010-C127 on December 2, 2010;
Special Note: "Section 8.8" as referenced in this section, relates to Section 11-8-8 of the Zuni Law & Order Code.)

END OF TITLE XI. ZUNI DOMESTIC RELATIONS CODE

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Title XI, Part 2. DOMESTIC VIOLENCE CODE [April 1, 2002, Resolution No. M70-2001-B040]

CHAPTER 1: GENERAL PROVISIONS

§11.2-1-1. Purpose.

By virtue of its inherent authority as a sovereign nation and possessing powers of local self-government pursuant to Article VI of the Zuni Constitution, The Pueblo of Zuni hereby establishes the laws of the Pueblo concerning violence against family or household members, current or former intimate partners and other persons protected under this Code and sets forth the jurisdictional powers, duties and authority of those persons and agencies entrusted with the responsibility for its enforcement.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-1-2. Policy.

It is hereby declared as a matter of tribal policy that the Pueblo of Zuni's response to domestic violence will be that such violent and damaging behavior will not be tolerated or ignored. The establishment of this Code recognizes the obligation of the Zuni community, as a whole and through its various agencies and departments, to assist and protect individuals and families affected by domestic violence. To this end, the Domestic Violence Code seeks to guarantee to victims of domestic violence the maximum protection from abuse that the law can provide.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-1-3. Definitions.

These definitions shall be liberally construed so as to protect persons from violence by family or household members, current or former intimate partners or other persons specified in this Section. As used in this Code the following terms shall have the meanings indicated below:

- A. *Abuser* means a person who has committed an act of domestic violence.
- B. *Domestic violence* means any incident by an individual against any family or household member or other person protected under this Code resulting in:
 - (1) physical harm - pain, injury, or an impairment of a physical condition;
 - (2) a threat to cause physical harm - any act, including utterance of verbal threats, which is intended to cause another person reasonable fear of serious physical harm;
 - (3) severe emotional abuse - using threats, intimidation, or extreme ridicule to inflict humiliation and emotional suffering upon another;
 - (4) sexual assault - any physical contact or attempted physical contact of a sexual nature, with a person, made without that person's lawful consent;

(5) harassment - repeated actions or communications, by phone or by any other means, intended to intimidate, humiliate, degrade or cause fear in another person;

(6) coercion - using force, intimidation, or threatening words or actions to force a person to:

or a. engage in conduct, which the person has a right to abstain from;

b. abstain from conduct, which the person has a right to engage in;

(7) damage to property - disturbing, injuring, burning, or destroying the property of another;

(8) stalking - following a person or placing a person under surveillance by remaining present outside that person's school, residence, workplace or vehicle or any other place frequented by the person or repeatedly making unwanted contacts to that person by telephone, fax, e-mail or other similar means with the intent to kill, injure, harass or intimidate;

(9) kidnapping or false imprisonment - unlawfully taking, transporting or confining a person;

(10) larceny or burglary - taking property of a person without their permission or entering a person's property with intent to commit a felony; or

(11) trespass - entering or remaining on a person's property without permission of the person in control of the property.

C. "Family or household members" or "persons protected under this Code" includes:

(1) adults or minors who are current or former spouses;

(2) adults or minors who live together or who have lived together;

(3) adults or minors who are dating or who have dated;

(4) adults or minors who are engaged in or who have engaged in a sexual relationship;

(5) adults or minors who are related by blood or adoption (including ancestors or descendants, sisters, brothers, aunts, uncles, nieces, nephews or cousins of the first degree;

(6) adults or minors who are related or formerly related by marriage;

(7) adults or minors who have a child in common; and

(8) minor children of a person in a relationship described in Paragraphs (1) through (7). The list of persons protected under this Code shall be liberally construed to protect and include the intimate partnerships defined herein, and is not limited to "male-female partner" relationships.

D. *Knowingly* means, with respect to an element of an offense, that if the element involves the nature of his conduct or the attendant circumstances, the abuser is aware that his conduct is of that nature or that such circumstances exist; or, if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result. See Zuni Criminal Code.

E. *Mandatory arrest* means that the victim does not need to sign a complaint for an arrest to occur. A police officer shall arrest if there is probable cause to believe the person to be arrested has committed an offense as defined by this Code even though the arrest may be against the expressed wishes of the victim. See §11.2-2-3 of this Code.

F. *Order of protection* means a tribal court order issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to, another person.

G. *Probable cause for arrest* - means that the police officer, acting as a person of reasonable caution, has reasonable grounds to believe that the person to be arrested has committed domestic violence as defined by this Code, based on all the facts known to the officer, including the officer's personal observations, statements made by the parties involved in the incident, statements made by witnesses, if any, and other reliable information.

H. *Police officer* - means any commissioned employee of the Zuni Police Department or any other law enforcement agency that is currently certified by a law enforcement academy and is responsible for the prevention and detection of crime within the jurisdiction of the Pueblo of Zuni. The term specifically includes criminal investigators, Tribal Rangers and Bureau of Indian Affairs officers, and specifically excludes village officers and members of any neighborhood watch program or citizen police group.

I. *Resident* - means a member of the Pueblo of Zuni or any person living on the Zuni Reservation regardless of whether they are a tribal member, a non-tribal member Indian, or a non-Indian.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-1-4. Written Policies and Procedures.

A. The Pueblo of Zuni Domestic Violence Code and other applicable provisions of the Zuni Criminal Code shall be used to advance effective prosecution of the crime of domestic violence and to maximize the protection and safety of the victims of domestic violence and their children.

B. In cases involving domestic violence, the agencies shall follow the reporting procedures and case management procedures set forth in the Pueblo of Zuni Domestic Violence Protocol Manual.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

CHAPTER 2: CRIMINAL PROCEDURES AND PENALTIES

§11.2-2-1. Crime of Domestic Violence.

Any person who knowingly commits an act of domestic violence as defined in §11.2-1-3.B of this Code shall be deemed guilty of the offense of domestic violence.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-2-2. Duties of Police Officer to Victim of Domestic Violence; Required Notice to Victim.

A. A police officer that responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

- (1) taking the action necessary to provide for the safety of the victim and any family or household member;
- (2) confiscating any weapon involved or threatened to be involved in the alleged domestic violence and any weapon that is in the plain view of the officer or was discovered pursuant to a consensual or other lawful search;
- (3) transporting or obtaining transportation for the victim and any child to a shelter;
- (4) assisting the victim in removing essential personal effects;
- (5) assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility; and
- (6) giving the victim immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence.

B. As part of the notice required by the foregoing, the law enforcement officer shall give a written notice to the adult victim substantially as follows:

"If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report at no cost from the Zuni Police Department. You may ask the Zuni Police Department to file a criminal complaint. You also have the right to file a petition in the Zuni Tribal Court requesting an order for protection from domestic and family violence that could include any of the following orders":

(1) an order enjoining your abuser from threatening to commit or committing further acts of domestic violence;

(2) an order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;

(3) an order removing your abuser from your residence;

(4) an order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another family or household member;

(5) an order prohibiting your abuser from using or possessing any firearm or other weapon specified by the court;

(6) an order granting you possession and use of the automobile and other essential personal effects;

(7) an order granting you custody of your child or children.

(8) an order denying your abuser visitation;

(9) an order specifying arrangements for visitation, including requiring supervised visitation; and

(10) an order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney's fees.

The forms you need to obtain an order for protection are available from the Clerk of the Zuni Tribal Court. The resources available in this community for information relating to domestic violence, treatment of injuries, and places of safety and shelters are:

(1) New Beginnings: 782-4600

(2) Victims of Crime Advocates (VOCA): 782-4919

(3) Zuni Social Services: 782-7166

(4) Police/Social Services Dispatch: 782-4493,4494

(5) Indian Health Service: 782-4431

(6) Community and Indian Legal Services: 1-800-867-3452 or 1-800-524-4417.

You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and counseling expenses, moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done without an attorney in Zuni Tribal Court.

C. The written notice required by Subsection B shall not include the addresses of the shelters.

D. The officer providing the written notice shall inform the victim that the officer or another member of the Zuni Police Department will read the notice aloud or explain the notice in Zuni, if the victim so requests.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-2-3. Mandatory Arrest.

Without a warrant, a police officer shall arrest an alleged abuser if the officer has probable cause to believe that the person has committed domestic violence, whether that crime was committed in or outside the presence of the officer.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-2-4. Primary Aggressor; Dual Arrest.

A. If a police officer receives cross complaints of domestic violence from two or more opposing persons, the officer shall arrest the primary aggressor. In determining whether a person was the primary aggressor the officer shall consider one or more of the following:

- (1) The Pueblo of Zuni's intent to protect victims of domestic violence.
- (2) the history of domestic violence between the persons involved;
- (3) the relative severity of the injuries inflicted or threats creating fear of bodily injury;
- (4) the likelihood of future injuries to each person; and
- (5) whether one of the persons acted in self-defense.

B. If the officer determines that one person was the primary aggressor, the officer is not required to arrest the other person believed to have caused physical harm or bodily injury. However, if it appears that two or more parties were aggressors, the officer shall arrest both or all parties.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-2-5. Mandatory Investigative Report.

A. Whenever a police officer investigates an allegation of domestic violence, whether or not an arrest is made, and the officer shall make a written investigative report of the alleged abuse and submit that report to the Tribal Domestic Violence Prosecutor, the Director of New Beginnings, and the Director of Social Services, within 72 hours.

B. This mandatory investigative report must contain at a minimum the following information:

- (1) a description of the circumstances of the persons and their surrounding environment when the officer responded to the call;
- (2) a description, and photographs, if any, of the injuries or harm inflicted upon either or both parties and whether they received medical treatment;
- (3) evidence of any property damage;
- (4) summaries of the comments from the persons describing the circumstances leading to the call for law enforcement; and
- (5) if no parties, or more than one party, are arrested, the officer must set forth grounds for arresting no one or more than one party.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002; see also Pueblo of Zuni v. Vicenti, 23 SWITCA Rep. 1 (2012) (An investigating officer is not obligated to take photographs of a domestic violence victim, but if photographs are taken, then those photographs are to be included in the domestic violence mandatory investigative report).)

§11.2-2-6. Incident Report.

In the event that a victim of domestic violence seeks help from a social service provider or tribal agency referenced in the Zuni Protocol Manual, but does not report the incident to law enforcement, that social service provider or tribal agency may submit an incident report to the Zuni Police Department. If it chooses to submit a report, the provider or agency should do so within 72 hours. In determining whether or not to submit an incident report, the social service provider or tribal agency shall give due consideration to the wishes of the victim and to issues of confidentiality.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-2-7. Authority of Police Officers to Seize Weapons.

A. When there is an arrest for domestic violence, a police officer:

- (1) shall seize all weapons allegedly involved or threatened to be used in the commission of the crime; and
- (2) may seize a weapon that is in the plain view of the law enforcement officer or was discovered pursuant to a search conducted in accordance with the Zuni Rules of Criminal Procedure.

B. If an arrest for domestic violence leads to a conviction of the charge, the weapon seized shall not be returned. If there is no conviction, the weapon will be returned by law enforcement after notice from the Tribal Court of the disposition of the matter.

C. If there is a conviction of the charge of domestic violence, the Zuni Police Department shall charge a fee for the storage of the seized weapons.

D. All provisions of this Section apply equally to police officers charged with the crime of domestic violence.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-2-8. Filing a Criminal Complaint for Domestic Violence.

A. A criminal complaint charging the crime of domestic violence shall be signed by the police officer making the arrest for domestic violence or by the Zuni Prosecutor. If the alleged abuser is not in custody at the time the complaint is charged, the police officer or Prosecutor shall seek a warrant of arrest.

B. An individual may file a criminal complaint and sworn affidavit in the Zuni Tribal Court charging the crime of domestic violence. Upon receipt and review of the criminal complaint and affidavit, the Judge shall, if probable cause exists, issue a warrant to arrest the individual so charged.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-2-9. Twenty-Four Hour Hold Following Arrest.

Following an arrest for an offense pursuant to this Code, the alleged abuser may be held for a period of twenty-four hours following his or her arrest. The alleged abuser shall be arraigned and advised regarding bail in accordance with Zuni Rules of Criminal Procedure, and shall be eligible for bail following the twenty-four hour hold period.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-2-10. Conditions of Release.

A. In making a decision as to the release of a person arrested for and/or charged with domestic violence, the Court shall review the facts of the arrest and determine whether the alleged abuser is a threat to the victim, to family members, to a witness or to public safety, and is reasonably likely to appear in Court as ordered by the Court.

B. Before releasing a person charged with domestic violence, the Court shall impose conditions [to] ensure the safety of the victim and family and to ensure the alleged abuser's appearance at subsequent court proceedings, including anyone or more of the following:

(1) an order directing the alleged abuser to vacate or stay away from the home of the victim and to stay away from any other location where the victim is likely to be;

(2) an order enjoining the alleged abuser from threatening to commit or committing acts of domestic violence against the victim or other person protected under this Code;

(3) an order prohibiting the alleged abuser from harassing, stalking, telephoning, contacting, or otherwise confronting the victim, either directly or indirectly;

(4) an order prohibiting the alleged abuser from using or possessing a firearm or other weapon specified by the Court;

(5) [unused];

(6) an order prohibiting the alleged abuser from possessing or consuming alcohol or controlled substances;

(7) any other order required to protect the safety of the victim and to ensure the appearance of the alleged abuser in Court.

C. The Court shall issue a written order for [conditions] of release and immediately distribute copies to the alleged abuser, the victim, law enforcement, the Domestic Violence Prosecutor, the Director of Social Services, and the Director of New Beginnings. Failure to provide the alleged abuser with a copy of the conditions of release does not invalidate the conditions if the person has notice through oral order or other means.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002; Special Note: the version from which this was transcribed was missing a "to" in Subsection-B, which has been added as "[to]" above; additionally, the version used the singular "condition of release" at Subsection-C, which has been modified to the plural of "[conditions]" above.)

§11.2-2-11. Required Records.

A. Records Required in Court File: When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a person accused of a crime involving domestic or family violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why the witness is unavailable and the reasons the case cannot be prosecuted.

B. Police Department Records: The Zuni Police Department shall keep and update a listing of protection orders and conditional release orders issued pursuant to this Code indicating effective dates for the orders and restrictions. The list shall be readily accessible to officers.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-2-12. Criminal Case Shall Not be Dismissed Because Civil Compromise is Reached.

A court shall not dismiss a criminal complaint charging domestic violence for the sole reason that a civil compromise or settlement, including but not limited to a tort settlement, custody agreement or issuance of a protection order, is reached, or that children are involved in the case.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-2-13. Penalties for Crime of Domestic Violence.

A. Domestic violence is a Class A offense, subject to the maximum imprisonment and/or fine allowable under the Constitution of the Pueblo of Zuni. If the abuser is incarcerated, the Court may order the abuser to reimburse the Zuni Tribe for the cost of his or her incarceration.

B. The Court shall order any person found guilty or pleading guilty to a charge of domestic violence to make appropriate reimbursement to the victim for expenses associated with domestic violence, including but not limited to medical expenses, counseling fees and the repair or replacement of damaged property.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-2-14. Probation.

A. In the discretion of the Court, any penalty ordered by the Court pursuant to Section 11.2-2-13.A may be suspended pending the completion of a recommended term of probation.

B. In lieu of the imposition of such confinement and/or fine as authorized under 11.2-2-13.A and 13 .B, the Court may order a person convicted of the offense of domestic violence to complete a term of probation and to comply with the conditions of that probation, including directing the abuser to undergo a psychological evaluation, including an alcohol/chemical dependency test, and to comply with any resulting recommendation for counseling.

C. If the abuser fails to comply with the terms of probation, the Court shall order execution of any suspended sentence.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-2-15. Spousal Privileges Inapplicable.

The following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving domestic or family violence perpetrated by the other spouse:

- A. The privilege of confidential communication between spouses.
- B. The testimonial privilege of spouses.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

CHAPTER 3: CIVIL ORDERS OF PROTECTION

§11.2-3-1. Eligible Petitioners.

Any victim of domestic violence may file a petition for an order of protection if either the petitioner or respondent, or both, are enrolled members of the Pueblo of Zuni or non-members who are residents of the Pueblo of Zuni.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-3-2. Standard Forms; Clerical Assistance; Fee Waivers.

- A. The Clerk of the Tribal Court shall provide to a person requesting an order of protection a standard form for petitions for orders of protection.
- B. The Clerk of the Tribal Court and/or domestic violence caseworker shall provide clerical assistance in filling out the forms and filing the petition.
- C. Any fee required by the Zuni Tribal Court for filing civil petitions is hereby waived due to the special need for this relief.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002; see also 4/25/1996 Administrative Order (In the Matter of Injunctions); Special Note: the Domestic Violence Code supersedes the fee provisions in the Administrative Order.)

§11.2-3-3. Ex Parte Emergency Orders of Protection; Available Relief; Availability of Judge; Expiration of Order.

- A. The Tribal Court may issue a written or oral protection order ex parte when a law enforcement officer states to the Court in person, by telephone, or via facsimile, and the Court finds reasonable grounds to believe, that the petitioner or the petitioner's child is in immediate danger of domestic violence based on an allegation of a recent incident of domestic violence.
- B. A law enforcement officer who receives an emergency oral order for protection from a court shall:
 - (1) write and sign the order on an approved form;
 - (2) if possible, immediately serve a copy on the respondent and complete the appropriate affidavit of service;

- (3) immediately provide the petitioner with a copy of the order; and
- (4) provide the original order to the Court by the close of business on the next judicial day.

C. The Court may grant the following relief without notice and hearing in an order of protection issued ex parte:

- (1) prohibit the respondent from threatening to commit or committing acts of domestic violence against the petitioner or any designated family or household member;
- (2) prohibit the respondent from harassing, intimidating or stalking the alleged victim, either directly or indirectly;
- (3) remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;
- (4) prohibit the respondent from writing to, talking to, visiting or contacting the petitioner in any way except through the petitioner's domestic violence caseworker or attorney;
- (5) order the respondent to stay away from the petitioner and/or petitioner's residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;
- (6) prohibit the respondent from using or possessing a firearm or other weapon;
- (7) prohibit the respondent from possessing or consuming alcohol or controlled substances;
- (8) order possession and use of an automobile and other essential personal effects, regardless of the ownership of the essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
- (9) determine the temporary custody of any minor children;
- (10) order such other relief as the court deems necessary to provide for the safety of the petitioner and any designated family or household member.

D. [Unused]

E. A judge must be available 24 hours a day to hear petitions for emergency orders of protection.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-3-4. Temporary Order of Protection; Hearing.

A. Upon the filing of a petition for order of protection, the Court shall:

(1) immediately grant an ex parte temporary order of protection without bond, if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that an act of domestic violence has occurred;

(2) cause the temporary order of protection together with notice of hearing to be served immediately on the alleged abuser; and

(3) within ten days after the granting of the temporary order of protection, hold a hearing on the question of continuing the order.

B. If an ex parte order is not granted, the Court shall immediately serve notice to appear upon the parties and hold a hearing on the petition for order of protection within seventy-two hours after the filing of the petition; provided that, if notice of hearing cannot be served within seventy-two hours, a temporary order of protection shall be issued and remain in effect until such time as a hearing can be held.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-3-5. Final Orders of Protection.

A. The Court may grant the following relief in an order of protection after notice and hearing, whether or not the respondent appears.

(1) grant the relief available in accordance with Section 11.2-3-3.C, above;

(2) make findings and impose restrictions sufficient to invoke protections afforded by federal laws;

(3) award temporary custody of any minor children where appropriate;

(4) specify arrangements for respondent's visitation of any minor children and, if necessary to protect the petitioner and the children, require supervised visitation or deny visitations;

(5) order the respondent to do any of the following that may apply:

a. pay rent or make payment on the mortgage on the petitioner's residence and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or the minor child;

b. reimburse the petitioner or other person for expenses associated with domestic violence, including but not limited to medical expenses, lost earnings and/or support, counseling, the repair or replacement of damaged property; and the expense of any temporary housing.

c. pay the costs incurred in bringing the action.

(6) order the petitioner to attend appropriate domestic violence counseling, if necessary;

(7) restrain the parties from transferring or concealing property except in the usual course of business.

B. The Court shall:

(1) cause the order to be delivered to the Zuni Police Department for service on the respondent;

(2) make reasonable efforts to ensure that the petitioner and respondent, if present understand the order of protection;

(3) transmit, by the end of the next business day after the order is issued, a copy of the order of protection to the proper law enforcement agency.

C. The tribal law enforcement agency shall provide for expedited service of orders of protection.

D. If the order supersedes any prior court order concerning domestic arrangements, it shall so state on its face.

E. No order issued shall affect title to property.

F. Final orders of protection shall be effective for a minimum time period of three months but the Court may, in its discretion, impose a longer time period of effectiveness.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-3-6. Modification of Orders of Protection.

An existing ex-parte order of protection or an existing final order of protection may be modified upon motion to the Court.

§11.2-3-7. Extension of Final Order of Protection.

A. Prior to the expiration of a final order of protection, the petitioner may apply for a modification to extend the time period for which the order of protection is effective.

B. The Court may, in its discretion, issue an order of protection of permanent duration, particularly if the victim has been subjected to domestic violence that required hospitalization or resulted in life threatening injuries, significant disfigurement, impairment, or disability.

C. If there has been no violation of the existing order prior to the application for extension, the Court shall take this as an indication that the order of protection is effective in assuring the safety of the victim. The Court may not use the fact that there has been no violation of the order of protection to determine that there is no further need for the order of protection.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-3-8. Effect of Action by Petitioner or Respondent on Order.

A. If an order of protection requires a respondent to stay away from the residence of a petitioner or to stay away from the petitioner, an invitation by the petitioner does not invalidate the order of protection.

B. An order of protection can only be dismissed by the Tribal Court.

C. To request that an order of protection be dismissed, a petitioner must file a motion to dismiss an order of protection with the Tribal Court. After a hearing, the Court will decide whether or not to dismiss the order.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-3-9. Violation of an Order of Protection.

A. Violation of an order of protection issued pursuant to the Domestic Violence Code shall constitute contempt of court.

B. A law enforcement officer shall arrest without a warrant and take into custody any person who the officer has probable cause to believe has willfully violated an order issued pursuant to this Domestic Violence Code. The arrested person immediately shall be served notice

C. A person convicted of violating an order of protection granted by this Court under the Domestic Violence Code shall be sentenced in accordance with Title I, Chapter 4, Section 1-4-3, Zuni Tribal Law and Order Code. Violation of an order of protection is a Class A offense.

D. In addition to any other punishment provided in the Domestic Violence Code, the Court shall order a person to make appropriate restitution to the party injured by the violation of an order of protection and order the person convicted to participate in and complete a program of professional counseling, at his or her own expense.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-3-10. Time for Filing.

In determining whether to grant an order of protection, the Court shall consider whether the petitioner's fear is reasonable and imminent regardless of the lapse of time between the act of domestic violence and the filing of the petition.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-3-11. Mutual Orders of Protection.

A court shall not issue an order for protection that is a mutual order against both parties.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-3-12. Continuing Duty to Inform Court; Other Proceedings; Omission of Petitioner's Address.

A. At any hearing in a proceeding to obtain or amend an order of protection each party has a continuing duty to inform the court of any other civil proceedings whether in civil, family, or juvenile court, and each criminal case involving either of the parties.

B. An order of protection is in addition to other available civil or criminal proceedings. A petitioner is not barred from applying for an order of protection because of other court proceedings. The Court shall not delay granting relief because of a pending action between the parties. The Court shall not refuse to grant or dismiss an order of protection because of the possibility, pendency, or existence of other court proceedings.

C. Petitioners may omit their home address from all court papers, but the Court shall maintain the address under sealed record, not to be accessible without petitioner's consent.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-3-13. Full Faith and Credit.

A. Any order of protection issued pursuant to due process of law by a court of any other jurisdiction, state or tribal, shall be accorded full faith and credit by this court and enforced as if it were an order of this court.

B. A law enforcement officer may rely upon a copy of any foreign protection order that has been provided to the officer by any source and may also rely upon the statement of any person protected by a foreign order that the order remains in effect. A law enforcement officer acting in good faith shall be immune from civil and criminal liability in any action arising in connection with a court's finding that the foreign was not enforceable.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

CHAPTER 4: VIOLENCE AGAINST DOMESTIC VIOLENCE ADVOCATES AND VOLUNTEERS.

§11.2-4-1. Purpose.

A. The Pueblo of Zuni recognizes that abusers and/or their families may target tribal and domestic violence advocates, as well as others who assist victims of domestic violence, for retaliatory violence, intimidation, harassment, and other unlawful acts. Such acts often are committed or attempted as a result of advocacy activities and assistance rendered during the course of advocacy duties or efforts.

B. For the purpose of this Chapter:

(1) "unlawful acts" means any violation of a protection order, issued against an abuser, that enjoins the abuser and/or his family from committing assault, battery, harassment, intimidation, stalking, malicious mischief, destruction of property, terroristic threats, or any other unlawful act of force or violence, as set forth under the Zuni Tribal Code, against any domestic violence victim advocate.

(2) the abuser's "family" includes parents, grandparents, children, siblings, uncles, aunts, cousins of the first degree, current or former spouses and their parents, grandparents, children, siblings, uncles, aunts, or cousins of the first degree.

(3) "advocate" is construed to include Tribal employees, volunteers, and employees of private, non-profit agencies, employees and volunteers of any domestic violence shelter or program, or any other person who, in the course of their regular duties, provides services or assistance to victims of domestic violence.

C. This Chapter makes any such retaliation or intimidation actionable as a matter of Civil Contempt and any findings of liability by the Zuni Tribal Court will subject the respondent to the sanctions expressed in this Chapter, as well as any other applicable fines, remedies, or restrictions available under Title I, Chapter 4 (Contempt's), and Title II (Rules of Civil Procedure) of the Zuni Tribal Code.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-4-2. Implied Consent.

A. Any person who is not a member of the Zuni Tribe shall be deemed as having consented to the jurisdiction of the Tribe by doing personally, through an employee, through an agent, or through a subsidiary, any of the following acts within the exterior boundaries of the Zuni Indian Reservation:

- (1) transacting any business;
- (2) committing or omitting any act which results in a valid tort action;
- (3) owning, using or possessing any property situated within the exterior boundaries of the Zuni Indian Reservation;
- (4) engaging in any employer-employee relationship;

- (5) leasing or permitting of any land or property;
- (6) residing within the exterior boundaries of the Zuni Indian Reservation;
- (7) committing any act giving rise to claims for spousal support, separate maintenance, child support, child custody, divorce, or modification of any decree of divorce or separate maintenance proceedings;
- (8) entering any contractual agreement within the exterior boundaries of the Zuni Indian reservation.

B. The Pueblo of Zuni has chosen, through this Section, to exercise its civil authority to provide civil sanctions against those persons, whether members, non-members, or non-Indians, who live within the exterior boundaries of the Zuni Indian Reservation, or who otherwise come under the Tribe's authority through implied consent, and who use unlawful force or violence in violation of this Chapter.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

§11.2-4-3. Penalties.

Any person found liable, or against whom a default judgment has been entered, in any cause of action brought as a result of retaliation or intimidation against any person identified in Section 401, Paragraph A, herein, shall be subject to a minimum of \$1,000.00 punitive damages, plus such costs, medical fees, compensatory damages, and/or any further relief which the Court might deem just and proper.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002; Special Note: this section makes reference to "Section 401" but there is no known Section 401, and this probably makes reference to the civil contempt penalties referenced in Section 11.2-4-1(C).)

§11.2-4-4. Criminal Law Applicability; Referral for Criminal Action; Duty of Civil Court Clerk.

A. Any case brought, litigated, or settled as a result of a cause of action under this Section will not preclude referral for possible criminal prosecution under the Zuni Tribal Code and/or Federal Law.

B. The Zuni Tribal Civil Court Clerk shall, immediately upon receipt of a qualifying petition under this Chapter, forward a copy of the case information to the Tribal Prosecutor for review, follow-up investigation, and consideration for possible criminal prosecution under the appropriate Section(s) of the Zuni Tribal Code and/or referral for possible Federal Prosecution.

(Annotations: Enacted by Tribal Council Resolution No. M70-2001-B040 on 10/04/2001, which added Part-2 (Domestic Violence Code) to the Domestic Relations Code, and came into effect on 4/01/2002.)

**END OF TITLE XI., PART 2, DOMESTIC VIOLENCE CODE
[APRIL 1, 2002, RESOLUTION NO. M70-2001-B040]**

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TITLE XII. ZUNI CODE OF CREDITORS' RIGHTS AND RESPONSIBILITIES

CHAPTER 1. FORECLOSURE OF SECURED OBLIGATIONS

§12-1-1. Self Help Remedies Eliminated.

(1) All self-help remedies for the recovery of real or personal property secured to insure payment of obligations are hereby declared unavailable except as otherwise specifically provided herein.

(2) This section shall not be construed to prevent the voluntary surrender of secured property to a creditor by a debtor, provided, however, that such voluntary surrender occurs at the time of such surrender. All contractual provisions for such executed in advance of the need therefore shall be of no effect.

§12-1-2. One Action to Foreclose Security Interest.

(1) There can be but one action in the Tribal Court to recover any debt or enforce or foreclose any right secured by a mortgage or other security interest on non-trust real or non-trust personal property situated or located on the Reservation, which action must be in accordance with the procedures outlined herein.

(2) Notwithstanding the provisions next above, if the debt for which the encumbrance is held is not all due, but is payable in installments, whether such debt is evidenced by one or more principal notes or otherwise, such encumbrance may be foreclosed, at the election of the holder thereof, for the installment or installments due or other charges which are to be paid by the mortgagor, and the Court may by its judgment, direct the sale of the encumbered property or of the equity of the defendants therein, or so much thereof as may be necessary to satisfy the amount due, and such encumbrance shall otherwise remain in full force and effect and the holder thereof shall have the right to foreclose on the balance or any part.

§12-1-3. Action to Foreclose Interest in Personal Property.

(1) An action to foreclose a security interest in filing a complaint in the Tribal Court shall commence non-trust personal property. The term "non-trust" property as used herein means property, the title, which is not held in trust for the Zuni Tribe or any member of the Zuni Tribe.

(2) The Tribal Court shall determine the issues presented and may, by its judgment, direct the sale of the encumbered property, or so much thereof as is necessary, and direct the application of the proceeds of the sale to the payment of the costs of court, the expenses of such sale and to the amount due the plaintiff. If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the Court can direct entry of a judgment for such balance against the defendant or defendants.

(3) If it is reasonably made to appear after the complaint is filed that the collateral is in imminent danger of being concealed, removed from the Reservation, or otherwise disposed of in a manner inconsistent with the security interest, the court may order the person having possession or control over such property to appear and show cause why such property should not be taken into the custody of the court or other security provided to prevent the improper disposal of the collateral.

(4) Sale of property under the Court's judgment shall be conducted in the manner provided for execution sales under the Zuni Rules of Civil Procedure.

§12-1-4. Action to Foreclose Mortgage.

(1) An action to foreclose a mortgage or other security interest in non-trust real property shall be commenced by filing a complaint in the Tribal Court.

(2) A complaint to foreclose a security interest in real property shall name as parties all persons who claim an interest in said property as a result of a proper recordation of such interest in either the Tribal or county records or both, as applicable. No interest of the Tribe, whether recorded or not, may be affected in any action in which the Tribe is not a party by its own affirmative action or consent. Interests in the secured property, which are not recorded, may be affected as if recorded and the owner thereof made a party.

(3) The Tribal Court shall determine the issues presented and may, by its judgment, direct the sale of the encumbered property or so much thereof as is necessary, and direct the application of the proceeds to the costs of court, the expenses of sale, and to the amount due the plaintiff. If it appears from the police officer's return on the sale that the proceeds thereof are insufficient, and that an amount still remains due, the Court can direct the entry of a judgment for such balance against the defendant or defendants as provided below.

§12-1-5. Sale of Property - Notice.

(1) Before the sale of real property subject to a decree of foreclosure and order of sale, notice thereof must be given as follows: by posting written notice of the time and place of the sale giving a specific legal and general description of the property for 20 days in at least four public places on the Reservation, including one copy posted at the Tribal Headquarters, one copy posted in the post office nearest the property to be sold and one copy posted on the property to be sold.

(2) If ever there is a sale of property conducted without at least good faith, substantial compliance with the notice requirements as set forth herein, said sale may be declared void and of no effect by the Tribal Court.

§12-1-6. Conduct of Sale.

(1) All sales of property under decrees of foreclosure and orders for sale must be made at auction, conducted at the Tribal Headquarters, to the highest bidder between the hours of 9:00 a.m. and 5:00 p.m. on any business day.

(2) Once sufficient property has been sold to satisfy the judgment plus the costs of court and of the sale, no more property shall be sold.

(3) The person conducting the sale may not be a purchaser or be interested in any purchase at such sale.

(4) If the property being sold consists of several known lots or parcels, they must be sold separately. The judgment debtor, if present at the sale, may direct the order in which the property shall be sold when such property consists of several known lots or parcels. If a third person has an interest in part of the property to be sold, he may require that such part be sold separately.

(5) If a purchaser refuses to pay the amount bid by him for property sold to him at sale, the officer conducting the sale may again sell the property to the highest bidder and if any loss be occasioned thereby, the officer may recover the amount of such loss, plus costs, from the bidder so refusing, in the Tribal Court. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

§12-1-7. Return on Sale.

(1) The Tribal police officer conducting the sale shall make a return thereon to the Tribal Court reciting all of the details of the sale.

(2) A certified copy of such return together with a certified copy of the Court's order directing said sale shall be filed by the purchaser in the appropriate county recorder's office.

§12-1-8. Title to Real Property.

(1) On a sale of real property, the purchaser is substituted to, and acquires all of the right, title, interest and claim of the judgment debtor thereto.

(2) The property so acquired is subject to redemption as provided herein.

(3) At the time payment for the sale is made, the officer conducting such must give to the purchaser a Certificate of Sale containing: applicable),

(a) the name of the purchaser,

(b) the name of the judgment debtor,

(c) the particular legal description of the property sold,

(e) the total price paid, and

(f) that the sale is subject to redemption.

(4) The officer conducting the sale shall provide the purchaser with sufficient certified copies of the Certificate of Sale that the purchaser may file one copy with the office of the Recorder in each county where the property is located. The purchaser shall be provided with one certified copy for his own records and one copy shall be filed with the officer's return on the sale in the Tribal Court.

(5) If the purchaser of real property sold pursuant to an order of sale, or his successor in interest, should be evicted therefore in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, plus interest at the rate of 8% per annum from the judgment creditor.

(6) If the purchaser of real property sold pursuant to an order of sale, or his successor in interest, fails to obtain possession of the property as a consequence of irregularity in the proceedings related to the sales, or because the property sold was not subject to execution and sale, the Court having jurisdiction thereof must, after notice and on motion of such party in interest, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser, with interest thereon at the rate of 8% per annum, and the judgment so revived has the same force and effect as would the original judgment as of the date of revival.

§12-1-9. Redemption.

(1) All real property sold as provided herein is subject to redemption in the manner hereinafter provided by the judgment debtor or his successor in interest in the whole or any part of the property.

(2) The judgment debtor or redemptioner may redeem real property from the purchaser within six months after the sale by paying the purchaser for the amount of his purchase together with interest thereon at the rate of 8% per annum from the date of sale to the date of redemption, together with the amount of any assessments or additional costs which the purchaser may have paid thereon after the date of the purchase.

(3) Written notice of redemption must be given to the Tribal Police and a duplicate filed with the office of the County Recorder in each county in which the property is situated.

(4) If the debtor redeems, the effect of the sale is terminated and he is restored his estate.

(5) Upon redemption by the debtor, the person to whom the payment is made must execute and deliver to him sufficient copies of a Certificate of Redemption acknowledged and proved before an officer authorized to take acknowledgments of conveyances of real property. Copies of such certificates shall be filed at the appropriate county recorder's office.

(6) If no redemption is made within six months, the purchaser or his assignee is entitled to a conveyance by means of a Tribal Police Officer's Deed at the expiration of such time. Such Deeds shall be recorded at the appropriate county recorder's office.

(7) Redemption payment must be made in U. S. currency or by certified or Cashier's check and be made to the purchaser or for him to the officer who made the sale or his successor in office

(8) A judgment debtor or successor in interest desiring to redeem property must present to the person from whom he seeks to redeem or the officer, a) a certified copy of the judgment and order of sale under which he claims a right to redeem, and b) his own affidavit that he is the person entitled to redeem and showing the amount due to effect the redemption.

(9) Until expiration of the time for the redemption, the Court may restrain the commission of waste or changing the character of the property, but it shall not be waste for the person entitled to possession of the property to continue to use it in the manner it had been previously used, or use it in the ordinary course of husbandry, or to make necessary repairs thereon, or to make a reasonable use of the wood and timber thereon for the benefit of the property or the possessor in his reasonable enjoyment of the property.

(10) The purchaser from the time of sale until redemption is entitled to receive from the tenants in possession, the rents of the property sold, or the value of the use and occupation thereof. However, when any rents or profits have been received by the purchaser, or his assigns from the property thus sold prior to redemption, the amount of such rents and profits shall be a credit on the redemption money to be paid. If the judgment debtor or person entitled to redeem, prior to the expiration of the time for redemption, demands of the purchaser or his assigns a written and verified statement of the amount of such rents and profits received, and/or assessments or costs paid by the purchaser, the period of redemption is extended until five days after such sworn statement is received by the redemptioner. If such purchaser or his assign fails

or refuses for a period of one month to give such statement, the redemptioner may, within 60 days of such demand, bring an action in the Tribal Court to compel an accounting and disclosure of such rents and profits, and until fifteen days after the final determination of such action, the right of redemption is extended to such redemptioner.

§12-1-10. Surpluses and Deficiencies From Sales.

(1) If there remains surplus money remaining after the payment of the costs of court and of the sale and payment of the judgment creditor, such funds shall be distributed by the Court to the judgment debtor or other person entitled thereto.

(2) A deficiency judgment may be entered by the Court in a case involving the foreclosure and sale of real property whenever the amount due under the secured indebtedness plus costs of court and of the sale exceed the reasonable value of the property at the time of sale. The Court is not bound by the price for the property received at the sale but may take evidence to determine the actual reasonable value.

CHAPTER 2. ACTIONS TO RECOVER POSSESSION OF REAL PROPERTY

§12-2-1. Self Help Remedies Forbidden.

Except in the case where a person in possession voluntarily surrenders such possession to another claiming a paramount right to such possession, all self-help remedies to recover possession of real property are forbidden except as otherwise provided herein.

§12-2-2. "Forcible Entry" Defined.

A person commits a forcible entry whenever he either:

(1) Breaks open or by any other type of unauthorized opening of the doors, windows, or other parts of a house or other residential dwelling or by fraud, intimidation or stealth, or by any kind of violence or circumstances of terror, enters upon or into any real property; or

(2) After entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in actual possession.

§12-2-3. "Forcible Detainer" Defined.

A person commits a forcible detainer whenever he:

(1) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or

(2) In the nighttime or in the absence of the occupants of any real property, unlawfully enters thereon, and, after demand made for the surrender thereof, refuses for the period of three days to surrender the same to the former occupant. The occupant of real property within the meaning of this subsection is one who within five days preceding such unlawful entry was in the peaceable and undisturbed possession of such property.

§12-2-4. "Unlawful Detainer" Defined.

A person commits an unlawful detainer if, being a tenant of real property with a term of less than his life, he either:

(1) Continues in possession, in person or by subtenant, of the property or any part thereof, after the expiration of the term for which it is let to him. In all cases where real property is leased or rented for a specified term or period, or by express or implied contract, whether written or parole, the tenancy shall be terminated without notice at the expiration of such specified term or period; or

(2) Having leased or rented property for an indefinite time with monthly or other periodic rent reserved, he continues in possession thereof in person or by subtenant after the end of such month or period after having been served with notice requiring him to quit the premises at the end of such month or period, such notice having been served upon him fifteen or more days prior to the end of such month or period, or in cases of tenancies at will, where he remains in possession of such premises after the expiration of a notice of not less than five days; or

(3) When he continues in possession, either in person or by subtenant, after default in the payment of any rent and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises shall have remained uncomplished for a period of three days; or

(4) When he assigns or sublets the leased or rented property contrary to the covenants in the lease or contract, or commits or permits waste thereon, or when he sets up or carries on thereon any unlawful business, or when he suffers, permits or maintains on or about said premises any nuisance, and remains in possession after service upon him of a notice to surrender the premises within three days; or

(5) Continues in possession in person or by subtenant, after a neglect or failure to perform any material condition or covenant of the lease or rental agreement under which the property is held, other than those hereinbefore mentioned, and after notice in writing requiring in the alternative the performance of such conditions or covenants or the surrender of the property served upon him, and, if there is a subtenant in actual occupation of the premises, also upon such subtenant, shall remain uncomplished for five days after service thereof. Within the five-day period, any subtenant, or mortgagee of the term, or other person interested in the continuance of the term may perform such condition or covenant and thereby save the lease or agreement from forfeiture, unless such condition or covenant cannot then be performed or cannot be performed by anyone except the original tenant. If the broken covenant or condition is not capable of remedial performance after its breach, the required notice need not list such performance as an alternative.

§12-2-5. Notices - How Served.

The notices required by the preceding section may be served either:

(1) By delivering a copy to the tenant personally; or

(2) If he is absent from his place of residence, or from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place and sending a copy thereof through the mail addressed to the tenant at his place of residence or place of business; or

(3) If such place of residence or business cannot be ascertained or a person of suitable age or discretion cannot be found there, then by fixing a copy in a conspicuous place on the property and also delivering a copy to a person there residing, if such person can be

found, and also sending a copy through the mail addressed to the tenant at the place where the leased property is situated.

- (4) Service on a subtenant may be made in the same manner.

§12-2-6. Action to Regain Possession.

(1) The Tribal Court shall have jurisdiction to hear and decide actions to recover possession of both trust and non-trust property as a result of an alleged forcible entry, forcible detainer or unlawful detainer in an accelerated manner as provided herein. Any other action to regain possession of property may at the discretion of the judge, but need not, be handled in an accelerated manner as provided herein.

(2) In any accelerated proceeding allowed herein, the Court shall endorse on the summons the number of days within which the defendant has to answer, which shall not be less than three nor more than twenty days from the date of service. The time for reply to a counterclaim, if any, shall be deemed likewise shortened.

(3) At the close of the pleadings, the Court may advance hearing the matter on its trial calendar.

(4) The plaintiff's complaint, in addition to setting forth the facts and allegations on which he seeks to recover, may also set forth therein any circumstances of fraud, force or violence which may have accompanied the alleged forcible entry or forcible or unlawful detainer and claim damages therefore or compensation for the occupation of the premises, or both. When unlawful detainer is charged after default in the payment of rent, the complaint must state the amount of such rent.

(5) At the trial of any proceeding for forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in the actual possession of the premises in question or was entitled to the possession at the time of the forcible detainer.

(6) In cases of tenancy of agricultural land where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any demand of possession or notice to quit by the landlord or his successor in estate, the tenant shall be deemed to have the permission of the landlord or his successor in estate to hold over for a full year under the same terms and conditions as the original tenancy, and such tenant shall not be guilty of an unlawful detainer for such period by reason of his holding over.

(7) The remedies available herein shall be available to a tenant to regain possession from a subtenant in appropriate cases.

(8) No person other than the tenant of the premises and subtenant if there is one in actual occupation of the premises at the time the action is commenced need be made a party defendant. Any person entering into possession with the consent of the tenant after an action is commenced for forcible entry or forcible or unlawful detainer shall be bound by such action, whether made a party or not.

§12-2-7. Judgment.

(1) If at trial, whether with or without a jury, the finding is in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises to the plaintiff.

(2) In a proceeding for unlawful detainer for neglect or failure to perform any condition or covenant under a lease or agreement under which property is held, or after default in the payment of rent, the judgment shall declare the forfeiture of such lease or agreement.

(3) At trial, the finder of fact, whether the jury or the judge without a jury, shall also assess damages caused to the plaintiff by the forcible entry or forcible or unlawful detainer, including damage for waste by the defendant during the tenancy, if proved, and shall also find the amount of rent due if such is in issue.

(4) When the action is for unlawful detainer after defaulting in the payment of rent and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not issue until five days after the entry of the judgment, within which time the tenant or any subtenant, or other party interested in the continuance of the term may pay into the court for the landlord the amount of the judgment and costs and thereupon that portion of the judgment shall be satisfied and the tenant's estate shall be restored. However, if such payment is not made within five days, the judgment may be enforced in its full amount and for the possession of the premises. In all other cases, the judgment may be enforced immediately.

§12-2-8. Time for Appeal.

(1) The time in which an appeal, if any, shall be taken from an action for forcible entry or forcible or unlawful detainer shall be ten days and the Appellate Court may, but need not, allow expedited handling of such appeal.

(2) Appeals in other actions to recover possession of real property shall be handled in the usual manner.

CHAPTER 3. CANCELLATION OF LICENSES AND OTHER PRIVILEGES GRANTED BY THE TRIBE.

§12-3-1. Procedure for Cancellation of Licenses or Other Privileges Granted by the Tribe.

(1) The Tribal Court shall have jurisdiction over actions to cancel, suspend, or modify any license or any other privilege granted or administered by the Tribe to any person.

(2) Such actions shall be commenced by the filing of a complaint or petition on behalf of the Tribe by an officer, agent, or attorney for the Tribe. A copy of such petition shall be served upon the person or persons whose license or other privilege will be affected thereby.

(3) The person or persons whose license or other privilege will be affected by the action proposed in the complaint or petition shall have ten (10) days from the date of such service to file an answer or otherwise respond with the Court. No further pleadings or any discovery shall thereafter be allowed unless the Court shall otherwise order in the interests of preventing serious injustice. No default shall be entered for failure to answer or respond.

(4) Following the receipt of the answer or other response, or at the end of the ten-day period, if no such response is filed, the Clerk shall schedule a hearing before a judge of the

Tribal Court and cause notice thereof to be served upon the Tribe and the other parties. The scheduling of such hearings shall be given priority on the Court calendar over all matters for which no priority in scheduling is established in this Law and Order Code. The Clerk shall cause notice of the date, time and place of the hearing to be served upon the affected party or parties not less than 48 hours prior to the time set for the hearing. If personal service is not reasonably possible, such notice may be served by mailing a copy of the notice to the person or persons involved at their last known address and by posting a copy of said notice on the property to be affected, if any.

§12-3-2. Hearings on Cancellation of Licenses and Other Privileges Granted by the Tribe.

(1) The Tribal Court may, by rule, establish procedures for hearings as provided herein.

(2) At the time set for the hearing, the Judge shall examine the complaint or petition and any response thereto and shall determine whether proper notice to all parties has been provided.

(3) The Court sitting without a jury shall then hear such evidence as the parties wish to present and render its decision thereon.

(4) The person or persons whose license or other privilege may be affected shall have the following rights:

(a) To be represented by a professional attorney admitted to practice before the Courts of the Zuni Tribe or by a lay counselor, provided, however, that such attorney or counselor is hired by the person or persons affected at their own expense;

(b) To confront, examine and cross-examine all evidence presented against him;

(c) To present evidence in his own behalf;

(d) To receive written notice of any decision of the Tribal Court affecting any license or other privilege granted by the Tribe. Such notice may be personally served or may be mailed to such person at his last known address and a copy thereof posted in a conspicuous place on the property affected, if an interest in the use of real property is involved.

§12-3-3. Grounds for Canceling, Suspending, or Modifying Any License or Other Privilege Granted By the Tribe.

(1) The Tribal Court shall cancel any license or other privilege granted by the Tribe if, after receiving a petition or complaint from the Tribe and conducting a hearing thereon, it reasonably appears that the person or persons to whom the license or privilege has been granted has sold, leased, assigned or otherwise transferred the license or privilege or the right to use or take advantage of the license or privilege to any other person or persons or entity contrary to the terms, conditions, or covenants contained in the grant of the license or privilege and that by so doing they have derived a pecuniary or other benefit there from.

(2) The Tribal Court may cancel, suspend or modify any license or other privilege granted by the Tribe, if, after receiving a petition or complaint and conducting a hearing thereon, it reasonably appears that the person or persons to whom the license or privilege has

been granted has done any act contrary to the terms, conditions or covenants contained in the grant of the license or privilege.

(3) The Tribal Court may cancel, suspend, or modify any license or other privilege granted by the Tribe if, after receiving a petition or complaint and conducting a hearing thereon, it reasonably appears that such cancellation, suspension or modification is reasonably necessary to promote, implement, or preserve some governmental or proprietary interest of the Tribe. When ordering the cancellation, suspension or modification of an assignment or other privilege granted by the Tribe for the reasons set forth in this subsection, the Court shall condition its order upon such terms for the harvesting of crops, removal of livestock, relocation of persons or things, or winding up of business as appears just under the circumstances.

§12-3-4. Imposition of Penalties or Damages.

Whenever the Tribal Court finds grounds for the cancellation, suspension or modification of a license or other privilege granted by the Tribe, it may order the party or parties affected thereby to pay or repay to the Tribe any fees or charges past due, any money or the value of any benefits received by such party as a result of his violating any of the terms, conditions, or covenants contained in the grant of the license or privilege, and may assess damages for damage done to any Tribal property or interest as a result of the wrongful or improper acts of the party involved. Said charges may be enforced as civil judgments.

§12-3-5. Privilege Defined.

As used herein, the term "privilege" shall include any benefit, right or advantage granted to or enjoyed by a particular entity, person or group of persons by reason of any official action of the Tribe.

§12-3-6. Exceptions to Procedures.

The procedures contained herein shall not apply to the cancellation of fishing, hunting, or driver's licenses or in any other case where some other procedure is set forth in this Law and Order Code or other Tribal Ordinance.

END OF TITLE XII. ZUNI CODE OF CREDITORS' RIGHTS AND RESPONSIBILITIES

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TITLE XIII. ZUNI ELECTION CODE

§13-1-1. Purpose.

It is the purpose of this Code to establish procedures for the conduct of fair elections and to insure the secrecy and sanctity of the ballot.

§13-1-1(B). Code of Ethics. [Revised June 4, 2014, Resolution No. M70-2014-Q057]

The Pueblo of Zuni Ethics Code (2013) is hereby made applicable to those candidates who are found to be eligible by the Election Board to run for office per §13-1-2(2)(e) of the Zuni Election Code.

§13-1-2. Election Board.

(1) The Zuni Tribal Council shall appoint five (5) members of the Pueblo who shall serve as members of the Pueblo of Zuni Election Board (hereinafter referred to as the Election Board). The Tribal Council shall designate one member to serve as Chairman of the Election Board.

(a) The members of the Election Board shall be at least 18 years of age, a member of the Pueblo of Zuni, and a qualified voter in accordance with the Constitution of the Zuni Tribe

(b) The members of the Election Board shall serve at the pleasure of the Council, and may be removed for cause by the Council after a hearing. A vacancy due to the death, resignation or removal of a member of the Election Board shall be filled by the Council.

(c) The members of the Election Board may receive compensation for their services in amounts to be determined by the Tribal Council.

(d) No person may serve as a member of the Election Board if he is presently serving as an elected tribal official or is a candidate for tribal office.

(2) The Election Board shall have overall responsibility for the conduct of all tribal elections. These duties shall include, but not be limited to, the following:

(a) Publication of Election Notices. Posting of public notices of the calling of an election shall be done by the Election Board. Such notice shall be posted at the Tribal Office and other public places throughout the Pueblo. Notices may also be published in a local or regional newspapers or carried on radio and television stations as deemed appropriate.

(b) Identification of Polling Places. The Election Board shall select and arrange for an appropriate number of polling places on the Reservation.

(c) Selection of Poll Officials. A judge, clerk and teller shall be appointed by the Election Board for each of the polling places. Poll officials shall be compensated for their services in amounts to be determined by the Tribal Council.

(d) Election Supplies. The Election Board shall arrange for all election supplies including the printing of all ballots and for the printing or other reproduction of poll lists and lists

of electors and shall arrange for the delivery of the same to the judges of the polling places before the opening of the polls.

(e) Rulings on Eligibility of Voters and Candidates. Rulings upon the eligibility of candidates for tribal office and determinations of any claim as to the right to vote of any person listed or not listed on the "Register of Electors" shall be made by the Election Board. The decision of the Board may, within 10 days, be appealed to the Tribal Court.

(f) Internal Procedures. The Election Board may adopt procedures to govern its internal operations not inconsistent with this Code.

§13-1-3. Nominations and Primary Elections.

(1) The Election Board shall cause a Notice of Election to be posted throughout the reservation at least 180 days before the scheduled date for a regular election or other election at which any elective office is to be filled.

(2) Said Notice of Election shall state the offices to be filled and that nominations must be made with the Election Board prior to a date certain not less than 150 days before the scheduled election.

(3) Any person wishing to run for office must file a Certificate of Nomination with the Election Board. Such Certificate of Nomination shall be signed by the person wishing to run for office and shall state under oath that such person meets the qualifications for the office for which the Certificate of Nomination is submitted. In the case of a person submitting a Certificate of Nomination for Governor or Lieutenant Governor, the Certificate of Nomination shall state the other person with whom the nominee is teamed for purposes of running together. Such other person shall also be required to file a Certificate of Nomination.

(4) Following the close of the nomination period, the Election Board shall examine the Certificates of Nomination and determine whether or not a primary election will be required. A primary election shall be held whenever there are more than two (2) nominee teams running for Governor-Lieutenant Governor and/or whenever there are more than twelve (12) nominees for positions on the Tribal Council.

(5) If a primary election is required, the Election Board shall schedule a primary election not less than 120 days before the scheduled regular or other election; shall post notices of such primary election at least 14 days before the scheduled election date; shall list all nominees for the respective offices on the notice so posted; and shall otherwise conduct the primary election in the manner provided in this Code.

(6) The Election Board shall cause to be posted at least 90 days before the scheduled regular or other election a notice of nominees whose names will appear on the final election ballots. Such nominees shall consist of the two teams of nominees receiving the highest number of votes in the primary election for Governor-Lieutenant Governor (or those teams who have submitted Certificates of Nomination if no primary election is held for those offices), together with the twelve (12) persons receiving the highest number of votes for Tribal Council positions in the primary election (or all those who have submitted Certificates of Nomination if no primary election is held for those offices).

§13-1-3(A) Qualification for Office. [Revised June 4, 2014, Resolution No. M70-2014-Q057]

In addition to the qualifications listed for office in the Zuni Constitution at Article V., Section 4, the following qualifications shall apply to any candidate seeking elective office at the Zuni Tribe.

(1) Candidates shall not have engaged in any actions which can be considered an offense of moral turpitude, neglect of duty, malfeasance in office or misconduct that reflected negatively on the dignity and integrity of the Zuni tribal government as evidenced by any conviction, judgment, order, plea agreement or settlement in any court or administrative agency of competent jurisdiction; or by any disciplinary action by any employer. Such persons shall be ineligible to run for tribal office for four election cycles dating from when the prospective candidate engaged in the prohibited actions described in this paragraph.

(2) Any person who, having been elected to tribal office refused to take the Oath of Office and assume the office to which they were elected, thereby forfeiting their office, shall be ineligible to run for tribal office for four election cycles dating from their refusal to take the Oath of Office.

(3) Any person who, having been elected to tribal office but was removed from office pursuant to Article XVII, Sec. 1 of the Zuni Constitution, shall be ineligible to run for tribal office for life.

(4) The terms "moral turpitude, neglect of duty, malfeasance in office or misconduct" shall have the same definitions as such terms are defined in the Pueblo of Zuni Ethics Code (2013).

(5) Failure of a candidate to disclose such disqualifications shall subject the candidate to prosecution for perjury disclose and disqualification as a candidate. If the failure to disclose is discovered after the election, such candidate shall be subject to removal from office if elected.

§13-1-4. Poll Officials.

It shall be the duty of the judge, clerk and teller appointed by the Election Board for each polling place to see that the balloting and the canvassing of the election returns are carried out in the manner prescribed by this Election Code. Persons appointed as Poll Officials should be able to speak the Zuni language in order that they may communicate with non-English speaking voters. No person who is a candidate or a member of the immediate family of a candidate shall serve as a poll official.

§13-1-5. Voter Qualifications.

(1) Resident Voter. Any member of the Zuni Tribe as determined by Article II of the Constitution of the Zuni Tribe who is eighteen (18) years of age, or older, has registered to vote, and who presents himself at the polls on Election Day shall be entitled to vote.

(2) Absentee Voter. Any member of the Zuni Tribe as determined by Article II of the Constitution of the Zuni Tribe who is 18 years of age, or older is duly registered to vote, and meets one of the following criteria: (a) lives further than 30 miles from the polling place nearest his residence, or (b) expects to be absent from the polling place of his registration on the day of the election, or (c) is physically incapacitated so as to be unable to go to the polls on election day, shall be entitled to vote as an absentee voter.

§13-1-6. Ballots.

(1) Form of the Ballot. The ballots shall be printed in the form approved by the Election Board. At the upper right-hand corner of the stub of each ballot, and at the adjacent corner of the ballot, shall be printed or stamped, by a consecutive numbering machine, the number of said stub and ballot. The stub shall bear the same number as the ballot, and such numbering shall begin with number "1" in each polling place and continue in consecutive order until each ballot and stub for that polling place is numbered. The corner of the ballot on which said number appears shall be so perforated that it will be easily detached. All ballots for general elections shall be upon white paper of such thickness as will render it impossible to look at the back of the ballot and tell for whom it is voted. Sample ballots may be upon cheaper paper.

(2) Number of Ballots. Ballots shall be supplied by the Election Board to each polling place in sufficient quantity to assure that each voter whose name appears in the "Register of Electors" for that polling place may receive a ballot.

(3) Arrangement of Names on Ballot. Names of candidates for each position being voted on shall be listed in alphabetical order.

(4) Delivery and Receipt for Ballots. The Chairman of the Election Board or his authorized representative shall cause to be delivered to the judge of each polling place the printed blank ballots and other election materials including ballot boxes, each with a lock, and fitted with one opening, and no more, of sufficient size to admit a single folded ballot. The key to the lock shall be given to the judge of the polling place. A duplicate key shall be retained by the Chairman of the Election Board. The judge of each polling place shall count all ballots delivered to him and shall receipt for the ballots and all election materials received from the Chairman of the Election Board or his authorized representative, and shall be responsible to account for all ballots and other election materials until delivered to the Chairman of the Election Board as provided herein.

§13-1-7. Voter Registration and Voting Lists.

(1) Registrars. The Election Board shall designate official registrars in a number sufficient to afford all eligible voters an opportunity to register to vote and to assure proper maintenance and upkeep of the Register of Electors. The secretary of the Election Board shall serve as registrar for absentee voters. Each registrar of voters shall have custody and responsibility for all registration books, records and materials entrusted to him. Each official registrar shall receive as sole compensation for his services an amount to be determined by the Tribal Council.

(2) Registration Records. The official registration for each polling place shall be contained in binders designated as "Register of Electors" arranged alphabetically and designed to record all necessary information. A duplicate set of registration records shall be maintained by the secretary of the Election Board as a "Central File."

(3) How to Register As a Voter. Any member of the Zuni Tribe, otherwise qualified to vote, who desires to become eligible to vote at a polling place, may register either in person or by mail with either a designated registrar or with the secretary of the Election Board. Any member of the Zuni Tribe, otherwise qualified to vote, who desires to become eligible to vote by absentee ballot and who lives farther than 30 miles from a designated polling place or otherwise qualifies as an absentee voter, may register either in person or by mail with the secretary of the

Election Board. Upon completion of his registration, each elector shall be given a "Voter's Identification Card" which certifies that the member is a qualified voter of the Zuni Tribe.

(4) How to Transfer Registration. The registration of any registered voter who desires to change his polling place shall be transferred to the polling place where he wishes to vote upon his written request to the secretary of the Election Board.

(5) Registration Period. Any member of the Tribe, otherwise qualified to vote, may register at any time up to the closing of registration 15 business days prior to any election. Registration shall re-open on the day following election. A onetime exception to the closing of the registration period 5 business days prior to any election shall be permitted for the first election to be held under this Election Code. At that election, registration will be accepted until the closing of the polls on Election Day.

(6) Preparation and Posting List of Registered Voters. Upon the close of registration, the secretary of the Election Board shall prepare for each polling place a list of all registered voters entitled to vote at that polling place as shown by the official registration records. A current voting list shall also be furnished to the Tribal Council before each election. A one-time exception to the posting of a list containing the names of all qualified voters for each election shall be permitted for the first election to be held under this Election Code.

§13-1-8. Absentee Voting.

Absentee ballots shall be issued for all elections.

(1) Basis for Providing Absentee Ballots.

(a) Temporary Absence. Whenever a qualified resident voter expects to be, on the date of election, absent for any reason including illness from the vicinity of his polling place where he is registered to vote, he shall request an absentee ballot for the given election in the manner provided below.

(b) Nonresident Status. Registered voters who reside more than 30 miles from the nearest polling place may request to be considered nonresidents for purposes of participating in tribal elections. As such, they shall be entitled to vote by absentee ballot in all elections unless they change their residence to within 30 miles of a tribal polling place. The Election Board shall determine whether a person is entitled to nonresident status.

(2) Notification. As long as the nonresident absentee voter's registration remains current, he shall be notified by mail of the calling of elections, the issues and/or candidates to be voted on, and shall be advised of the proper manner of voting.

(3) Proper Address. It shall be the duty of the nonresident voter to provide a current mailing address to the Election Board.

(4) Manner of Requesting and Issuing Absentee Ballots. All requests for absentee ballots should be received not less than seven (7) days before Election Day so as to allow sufficient time for ballots to be supplied and returned by the election date. Any ballots received following the closing of the polls shall not be counted.

Each application for an absentee ballot shall be made individually in writing by the voter who is to cast the ballot. Upon receipt of a valid request the Election Board secretary shall forward to the voter all necessary forms, ballots, and instructions to be used in the pending

election. The secretary shall maintain a file of all applications received with the date of receipt stamped there on. Further, the file shall show the names and addresses of all persons to whom absentee ballots are mailed, including the date of mailing. Each such ballot shall be marked with the words "Absentee Ballot" and bear the date of issuance.

In conjunction with issuing an absentee ballot, the Election Board secretary shall immediately notify the registrar in the polling place where the concerned individual is registered, that he has been given an absentee ballot for the next election. The local registrar shall mark his record accordingly so that the individual shall not be permitted to vote at that polling place for the stated election. Following that election, the registrar of the local polling place shall adjust his records so as to permit said voter to cast his vote at that location during the next election.

(5) Execution and Return of Ballots. The absentee voter shall mark and fold the ballot and enclose it in the inner envelope supplied by the Election Board. He shall execute the affidavit supplied, which shall be in the following form:

I, _____, hereby certify that I am a member of the Zuni Tribe; that I will be at least 18 years of age on the election date and am entitled to vote in the election to be held on, _____; and that I cannot appear at the polling place where I am registered on Election Date because of:

Indicate One of the Following Reasons:

1. _____;
2. Illness _____;
3. Physical Disability _____;
4. Other: (state reason) _____;

I further certify that I marked the enclosed ballot in secret.

Signed _____
(Voter)

Subscribed and certified before us this _____ day of _____, 20____, and we hereby certify that we are of adult age; that the voter exhibited the ballot to us unmarked; that he then in our presence and in the presence of no other person, and in such manner that we could not see his vote, marked such ballot and enclosed and sealed the same in the envelope marked "Absentee Ballot.

Witness

Address

Witness

Witness

The voter shall, in the presence of two witnesses of adult age and of no other person, mark such ballot but in such manner that such witnesses cannot know how the ballot was marked, tear off the numbered stub and handle as indicated below. The ballot shall then in the presence of such witnesses be folded so as to conceal the marking and, in the presence of such witnesses, be placed in the envelope marked "Absentee Ballot" and the envelope sealed. The voter shall then execute and subscribe the certificate before such witnesses. He shall then sign the numbered ballot stub and place this stub, together with the sealed envelope marked "Absentee Ballot" and the Certificate in the outer envelope and mail it. The pre-addressed outer envelope shall be directed to the Election Board. Any absentee ballot not properly submitted in accordance with these instructions for absentee balloting shall not be counted.

The absentee ballots shall remain in the locked box provided for that purpose in the post office until 5:00 p.m. on the day of election, at which time the Chairman of the Election Board, or an election official designated by the Chairman, shall receive the locked box from the post office and shall personally transport the same to the canvas site where it shall be delivered immediately, (still locked, to the remaining members of the Election Board. No absentee ballots will be received at any time or by means other than provided for in this section, which is, by mail.

§13-1-9. Duties of Poll Officials and Voters.

The duties of the judge, clerk and teller in the conduct of the balloting shall be as follows.

(1) The judge shall be Chairman of the polling place election officials. He shall be responsible for all arrangements including availability of ballots and other election materials necessary to conduct balloting at his designated polling place. He shall also provide sufficient private booths or other places for the voters to mark their ballots in secrecy. The polling place election officials shall be present at the designated polling place on election day in time to permit voting to begin when the polls open and shall remain until the polls close, all ballots have been counted, the tally properly recorded and reported, and the ballot boxes and the ballots turned over for delivery as provided in this Code.

(2) Before the balloting begins, the judge, clerk and teller shall open and inspect the ballot box to determine that it is empty. The ballot box shall then be locked and shall remain locked until time to count the ballots.

(3) After opening the polling place, each voter upon presenting himself to vote, shall announce to the polling officials his name and address, and present his registration card. Any voter who signs with an "X" or a thumbprint shall have his mark witnessed by two election officials. Each voter must sign the poll book before he may receive a ballot. The polling officials will then determine if the voter's name appears on the official register electors for that polling place. Upon determination of the voter's eligibility, the polling officials shall issue a ballot or ballots to the voter.

(4) Upon receipt of a ballot or ballots, the voter shall retire to one of the private voting booths or other designated place and therein mark his ballot or ballots in secrecy. Only one person shall occupy a voting booth at one time except as provided elsewhere in this section. The elector must mark and deposit his ballot before leaving the polling place. The elector shall mark ballot with either an "X" or a check mark using the instrument provided by the election officials. Either mark, to be valid, must be identifiable with the appropriate square or place on the ballot for which it is intended. After the ballot or ballots are marked, the voter shall tear off the stub or stubs and shall fold the ballot or ballots so that the printed sides are

completely concealed and deposit the folded ballot or ballots in the ballot box. All stubs shall be deposited in a box provided for that purpose.

(5) In the event a voter appears at the polls to vote, without a registration card, and finds that his name does not appear on the official register of electors for that polling place, the polling officials shall determine by telephone contact with the election Board secretary, whether that person is, in fact, duly registered. Should he be found entitled to vote, he shall be permitted to cast a ballot. Should it be determined that he is not entitled to vote in that election, he shall not be permitted to cast a ballot.

(6) When any voter presents himself for a ballot and states that he, because of physical disability or infirmity, is unable mark his ballot, one of the election officials shall cause such voter to be sworn after the following:

"Do you solemnly swear (or affirm) that you are unable to mark your ballot for voting because of a physical disability or infirmity?"

Should the voter so qualify himself, it shall be the duty of two polling place officials to give the voter such assistance as he needs, but in all such instances the voter must state without suggestions from such officials, the way he wishes to vote, and in no instance shall an election official by word, action, or expression attempt to influence the voter as to how he should vote. Such assistance shall be given in privacy and all persons other than the election officials shall be kept sufficiently distant so that they will not hear or know how such infirm voter voted.

(7) Any voter who shall have need of an interpreter may either furnish his own interpreter, or request that one of the poll officials provide the required interpretations, which shall be provided without attempt to influence the voter as to how he should vote.

(8) All elections shall be held in accordance with Article XV of the Constitution or on a date specified by the Tribal Council in the case of special elections. Polls shall be open between the hours of 7:00 a.m. and 8:00 p.m. Any persons waiting in line to vote at closing time will be permitted to vote, but those presenting themselves after the hour for closing of the polls will not be permitted to vote.

§13-1-10. Handling of Special Circumstances.

(1) Spoiled Ballot. Should any elector spoil his ballot, in his effort to vote, he shall fold and return it in the presence of the election officials and such elector shall then, in the presence of said officials, destroy said ballot and the election officials shall then provide such elector with another ballot in the same manner that the first one was provided. The election official shall write on the proper blank line on the stub of the spoiled ballot the word "Spoiled." He shall not write the name of the elector upon the stub of the duplicate ballot, but shall write instead the words, "Duplicate of Number _____", giving the number of the original or spoiled ballot.

(2) Alternates for Polling Officials. Should any election official of any of the polling places become ill or have an un-foreseen emergency arise, the Chairman of the general election shall be notified immediately so that an alternate may be prepared to assume the responsibilities of the vacated position.

(3) Electioneering and Loitering. No person shall be allowed to electioneer within 100 feet of the building where and when the election is in progress. Neither will any loitering be permitted in the polling place during voting hours. It shall be the duty of the election officials at

the polling place to obtain such assistance as may be required to maintain order about the building during the progress of the election.

(4) In the event that, at the completion of the canvas of election results as prescribed herein, the tally reveals that two or more candidates have received the same number of votes and that this number is higher than the number of votes received by any other candidate in that contest, the Election Board will conduct a recount of the ballots cast in that contest. Should a tie exist at the completion of the recount, the Election Board will conduct a special election limited to the tied candidates. The same procedure shall be followed in the event that the affirmative and negative votes are tied in an election involving issues, a referendum, a recall or a constitutional amendment.

§13-1-11. Canvas of Election Results.

The judge, clerk and teller shall count and record the votes at each polling place as soon as the polls close, and immediately notify the Chairman of the Election Board of the results. All marked and unmarked ballots will be turned over to the Chairman of the Election Board within 3 hours of the closing of the poll; the election Chairman will issue a signed receipt for the ballots and have the ballots locked in the office of the Governor of the Zuni Pueblo for two years before being destroyed where they shall be available for inspection under the supervision of the Election Board.

(1) Poll Watchers. Each candidate for a position on the Tribal Council is entitled to choose one person to observe, on his behalf, the counting of ballots at each of the polling places. In elections to vote on issues, the Election Board may designate two (2) watchers for each polling place to observe the counting of the ballots; one to represent each side of the question under consideration. No watcher shall in any way interfere or hinder the election officials in exercising their responsibility.

(2) Counting the Ballots at the Polling Place. Immediately after closing the polls, the election officials at each polling place shall count the votes cast in the following manner. The judge, in the presence of the teller and the clerk and any watchers at each polling place, shall unlock the locked box containing the executed ballots. As the ballots are opened, the judge shall verbally announce the choice or choices indicated on the ballot. The clerk and/or teller shall record such information on tally sheets provided for such purpose. Upon completion of the tally, the judge shall execute a certification of the voting results for that polling place and post a copy of such notice at that location. If the number of votes cast in the ballot box is found to exceed the number of names on the voter registration list, that fact shall be noted on the tally sheets by the clerk.

(3) Announcing Results to Election Board. Immediately upon completion of the count, the judge at each polling place shall convey to the Election Board Chairman the results of the voting.

(4) Return of Election Materials. The marked ballots, all unused ballots, the tally sheets, the key to the ballot box, and the original of the certificate of results shall be placed in the ballot box. The box shall be locked and delivered to the Chairman of the Election Board within 3 hours of the closing of the polls.

(5) Preparation for Counting Absentee Ballots. After the receipt of the absentee ballots as provided above, the Election Board secretary and at least one polling official shall count the ballots. Each outer envelope shall be opened but the inner envelope shall remain unopened at that point. The secretary shall then determine whether the person whose name is

signed to the affidavit is a duly registered voter and check said voter against the absentee voting list. The sealed inner envelope shall then be dropped into the official ballot box and remain there until the actual count of all absentee ballots is started. Any ballot not properly submitted in accordance with the instructions for absentee balloting will be maintained separate and will not be counted.

(6) Counting Absentee Ballots. When everything is in readiness, the Chairman of the Election Board shall open the absentee ballot box, after which the count shall be made in the manner for the counting at the polling places. A list of the names of all absentee voters and their marked ballots shall be deposited in an appropriate container and kept in a safe place in-charge of the Governor of the Zuni Pueblo for a period of two (2) years.

(7) Improperly Marked Ballots. Should a portion of a ballot be improperly marked, the remainder of the ballot which is properly marked shall be counted. Any ballot on which the intent of the voter cannot be determined shall be preserved and filed with ballots submitted to the Governor for safekeeping with the notation placed on the face of the ballot indicating it was not counted.

(8) Announcement of Results. A statement shall be issued and posted to announce the election results as soon as possible following completion of the canvas of the election. However, such results shall be posted no later than two days following Election Day.

§13-1-12. Contests of Election Results.

(1) Requests for Recounts.

(a) Any qualified voter of the Tribe may at any time before 12:00 noon on the fifth workday immediately following the election, file with the Election Board a challenge of the correctness of the announced results of the tribal election and request a recount of the ballots. The request shall specify the candidate or position on behalf of which the request is being filed.

(b) The request for a recount must be in writing, signed, and must be accompanied by a \$50.00 recount fee. If the requester is successful in the recount, i.e., the candidate or position on behalf of which the request was filed is determined the winner at the end of the recount, he shall have returned to him any amount above the actual costs involved in the recount. If the recount is unsuccessful in regard to the requester, i.e., the candidate or position on behalf of which the request was filed is not determined the winner at the end of the recount, the requester forfeits the full \$50.00 recount fee.

(c) Upon receipt of the request for recount and the recount fee, the Election Board shall proceed to conduct a recount of the votes in the challenged contest. No challenge shall be considered that is not made within the time provided for that purpose.

(2) Protests Not Involving Recounts. Any qualified voter of the Tribe may at any time before 12:00 noon on the fifth workday immediately following the election, file with the Election Board protest or challenge concerning any aspect of the election. Such protest or challenge must be made in writing and signed by the protestor. The Election Board will respond in writing to such proper protest or challenge not later than 12:00 noon on the first Wednesday following the closing of the protest period.

(3) Appeals. A decision of the Election Board with regards contests may be appealed to the Zuni Tribal Court within 10 days.

END OF TITLE XIII. ZUNI ELECTION CODE

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TITLE XIV. ZUNI ENROLLMENT CODE

CHAPTER 1. TITLE AND DEFINITIONS

§14-1-1. Definitions.

- (1) "Applicant" means the person seeking to be enrolled.
- (2) "Appellant" means a person who is appealing the Zuni Tribal Council's decision to reject his application for enrollment.
- (3) "Sponsor" means the applicant's spouse, parent(s), recognized guardian, next of kin, or any tribal member who files an application for enrollment or appeal on behalf of another person.
- (4) "Enrollment Committee" means a committee nominated by the Governor and approved by the Zuni Tribal Council with the authority to recommend to the Tribal Council whether an application for enrollment should be approved or rejected. In the absence of such a committee, the functions thereof shall be performed by the Tribal Council itself.
- (5) "Tribe" means the Zuni Tribe of the Zuni Reservation, New Mexico.
- (6) "Court" means Tribal Court of the Zuni Tribe.
- (7) "Appellate Court" means the Zuni Appellate Court.

§14-1-2. Written Application for Enrollment to be Filed With the Enrollment Committee.

A separate written application for enrollment on a form approved by the Tribal Council shall be filed with the Enrollment Committee by or on behalf of each person applying for enrollment as a member of the Tribe.

§14-1-3. Sponsoring an Application for Enrollment on Behalf of Another Person.

If the person sought to be enrolled is a minor or other person in need of assistance, a member of the Armed Services or other Services of the United States Government or a member of their immediate families who are stationed outside of the continental United States, and an application for enrollment or an appeal from an adverse decision may be completed and filed by the sponsor of such person.

§14-1-4. Applications to be Numbered and Dated.

The Enrollment Committee shall assign an identifying number and shall record the date of each enrollment application received.

§14-1-5. Review and Recommendation on Applications.

The Enrollment Committee shall review all applications for enrollment and shall consider the information provided in such application(s), together with all other available evidence concerning the applicant's eligibility for membership, and make its written recommendation to the Tribal Council as to whether the application should be approved or rejected. The form for such written recommendation shall be approved by the Tribal Council. Where the Committee

considers additional information is needed, it may request such information and may request such person to appear before the Committee for a personal informal interview.

§14-1-6. Notice of Hearing to be Given When Application is Being Recommended or Considered for Rejection.

(1) Written Notice Required. Whenever the Enrollment Committee recommends rejection or the Tribal Council considers that an application for enrollment should be rejected, written notice that a hearing will be held concerning such application shall be given the person or sponsor filing the application, in the manner hereinafter provided, before a final determination of the applicant's eligibility for enrollment is made by the Tribal Council.

(2) Contents of Notice. The written notice required to be given under this Section by the Tribal Council shall:

(a) indicate the tribal membership requirement or requirements which the applicant apparently has failed to establish or other reasons why the application should be rejected;

(b) fix a time and place for the Tribal Council to hold a hearing to make its final determination of the applicant's eligibility for enrollment;

(c) indicate that the person or sponsor filing the application may appear before the Tribal Council at the time and place fixed for such hearing to show why the application for enrollment should not be rejected and to present additional evidence, if any, concerning the applicant's eligibility for enrollment. The content and form of such written notice shall be approved by the Tribal Council.

(3) Manner of Giving Written Notice. The notice required under this section shall be served twenty (20) days prior to the time fixed for the Tribal Council to hold a hearing to make its final determination of the applicant's eligibility for enrollment. Service of notice means:

(a) delivery to the person or sponsor filing the application; or

(b) delivery by the United States Post Office by certified mail, with postage thereon fully prepaid and return receipt requested, addressed to the person or sponsor filing the application for enrollment at the mailing address provided by such person in the application enrollment form, or at such different address as the person may subsequently provide the Enrollment Committee in writing.

(4) Presumption That Written Notice Was Received. Where it appears that the notice required under this Section was deposited in a United States Post Office more than thirty (30) days prior to the time fixed for the Tribal Council to hold its hearing concerning the applicant's eligibility for enrollment and that such notice was sent by certified mail as provided in Subsection (3) above, it shall be presumed that such notice was received by the addressee more than twenty (20) days prior to the time fixed for the hearing by the Tribal Council.

§14-1-7. Council Shall Determine Applicant's Eligibility for Enrollment.

(1) Reviewing Applicant's Eligibility for Enrollment. The Tribal Council shall review each application for enrollment together with the recommendation of the Enrollment Committee and determine whether the applicant is eligible to be enrolled as a member of the Tribe. The person or sponsor filing an application has the burden of proof of establishing to the satisfaction of the

Tribal Council that the applicant meets all of the requirements for tribal membership. The Tribal Council shall consider all relevant evidence regarding the applicant's eligibility for enrollment, but the relevancy, weight, and sufficiency of such evidence shall be determined by the Tribal Council.

(2) Hearing to be Held Before Application is Rejected. Before making a determination that an application for enrollment should be rejected, the Tribal Council shall hold a hearing concerning the applicant's eligibility for enrollment, and the person or sponsor filing the application shall be given written notice of the hearing in accordance with the provisions of § 14-1-6 above. The manner of conducting such hearing or any other matters pertaining to enrollment procedures shall be determined by the Tribal Council.

(3) Determination of Applicant's Eligibility. The determination as to whether an application for enrollment is approved or rejected by the Tribal Council shall be reduced to writing and signed by the Governor regarding each application for enrollment filed with the Enrollment Committee. Such determination shall also set forth findings of fact indicating whether the Enrollment Committee recommended that the application be approved or rejected, the membership requirements, which the Tribal Council found to be established, and those found not to be established. If the application is rejected, the Tribal Council shall also make special findings of fact concerning the written notice of hearing, which was given to the person or sponsor filing the application, and whether or not such person was present at such hearing.

§14-1-8. Notice of Determination of Applicant's Eligibility.

(1) Notice Required. Every person or sponsor filing an application for enrollment shall be served with written notice of acceptance or rejection by the Tribal Council attached to a copy of the determination of the applicant's eligibility.

(2) Content of Notice of Rejection. If the Tribal Council rejected the application for enrollment, the written notice shall provide that the rejection of the application for enrollment may be appealed to the Tribal Court in accordance with the appeal procedures established by this Ordinance. The notice shall indicate the time within which an appeal may be commenced and the procedure for commencing such appeal.

(3) Content of Notice of Approval. If the Tribal Council approved the application for enrollment, the written notice shall state that the application was approved and the tribal resolution number and the date of its enactment whereby the approval of such application was commemorated.

(4) Manner of Giving Notice. The notice required to be given under this section shall be given promptly after the Tribal Council makes its determination as to whether the application for enrollment is approved or rejected and shall be sent by certified mail with postage thereon fully prepaid, with a return receipt requested to the address provided by such person or sponsor filing the application, or at such different address as may be subsequently provided to the Tribal Council in writing.

§14-1-9. Right of Appeal.

Any person or sponsor filing an application for enrollment, which has been rejected by the Tribal Council, may appeal such rejection to the Tribal Court in the manner herein provided.

§14-1-10. Commencing an Appeal.

To commence an appeal, such person or sponsor must clearly express an intent to appeal such rejection to the Court in a written instrument, a copy of which must be served on the Tribal Council before the close of business on the thirtieth day after the notice of rejection is sent to the person filing the application for enrollment; however, if such notice of rejection is delivered to an address outside of the continental United States, there shall be 60 days in which to file such an appeal.

§14-1-11. Court Review.

Upon an appeal being commenced, the Tribal Council shall transmit copies of all documents pertaining to the application for enrollment, together with all documentary evidence presented concerning the applicant's eligibility to the Tribal Court. The burden of proof of establishing eligibility is on the appellant. The appeal should include any and all supporting evidence not previously furnished and may include a copy of or reference to any Bureau of Indian Affairs or Tribal records having a direct bearing on appellant's eligibility. The Appellant may furnish additional affidavits from person(s) having personal knowledge of the facts at issue. An appellant may request additional time to submit supporting evidence. A period considered reasonable for such submission may be granted by the Court. In the event that the appellant does not wish to make a personal appearance at the hearing, he may send a representative in his place and/or he may be represented by counsel.

§14-1-12. Hearing by the Court.

The Court will consider the record as presented, together with such additional information as may be considered pertinent. It will allow oral presentations to be made. Any such additional information shall be specifically identified in the decision.

§14-1-13. Decision of the Court.

The determination of the Tribal Council to reject an application shall not be reversed by the Courts unless it is found to be clearly erroneous. The determination as to whether an application for enrollment is approved or rejected by the Court shall be reduced to writing and signed by the Judge. Such determination shall also set forth findings of fact, stating whether the Enrollment Committee recommended that the application be approved or rejected, that the Tribal Council rejected the application, the membership requirements which the Tribal Council found to be established, and those found not to be established, and if the decision of the Tribal Council is reversed, the basis for the Court's finding that the decision of the Tribal Council was clearly erroneous. The Court shall also make special findings of fact concerning the written notice of the Court hearing which was given to the person or sponsor filing the appeal and whether or not such person or sponsor was present and/or represented at the Court hearing.

§14-1-14. Notice of Court Decision on Applicant's Eligibility.

(1) Notice Required. Every person or sponsor filing an appeal with the Tribal Court shall be served with written notice of the decision of the Court attached to a copy of the decision of the Court. A copy of the notice of Court decision attached to the Court decision shall also be served upon the Tribal Council.

(2) Content of Notice of Rejection. If the Court rejected the appeal, the written notice shall provide that the rejection of the application for enrollment may be appealed to the Zuni Appellate Court in accordance with the usual appeal procedures established for the

appeals to that Court. The notice shall indicate the time within which an appeal may be commenced and the procedure for commencing such appeal.

(3) Content of Notice of Approval. If the Court orders the approval of the application for enrollment, the written notice shall state that the application was approved.

(4) Manner of Giving Notice. The notice required to be given under this section shall be served promptly by the Court after it makes its determination and shall be sent by certified mail with postage thereon fully prepaid, with a return receipt requested to the person or sponsor filing the appeal, to the address provided by such person or sponsor, or at such different address as may have been provided to the Court in writing, and also to the Tribal Council.

§14-1-15. List of Applicants' Names to be provided Superintendent.

The Tribal Council shall furnish to a representative of the Bureau Indian Affairs a list of applicants' names and the application numbers indicating those applications, which were approved, and those rejected. A separate statement shall accompany such list stating the reason for the rejection of each rejected application.

§14-1-16. Tribal Membership Roll.

The tribal membership roll shall contain the names of all enrolled members of the Tribe. For each such person, the roll shall also indicate to the maximum extent possible the person's enrollment number, sex, date of birth, degree of Zuni blood quantum, degree of Indian blood quantum, parents' blood quantum, address, date of enrollment, and the name and base roll number of the person's parents. Any notations made upon such roll shall indicate by whom such notations were made, the date and the authority for making such notations.

§14-1-17. Tribal Membership Roll to be Kept Current.

The Tribal Council shall cause the tribal membership roll to be kept current and shall semi-annually review the roll for such purposes. The names of all persons who are deceased and all persons who have relinquished their membership in the Tribe in writing shall be noted in the roll. The names of all persons whose applications for enrollment have been approved by the Tribal Council or the Court shall be promptly added to the roll.

§14-1-18. Present Enrollment.

All persons whose names are listed and numbered on the official census roll of the Tribe of April 1, 1963, as corrected at any time prior to the adoption of this Enrollment Code by the Tribal Council and approved by the Secretary of the Interior, are presently enrolled.

§14-1-19. Children Born to Enrolled Member.

Any person who is a descendent of a person enrolled in the Tribe is entitled to enrollment if such descendent shall have not less than one-quarter (1/4) Zuni Indian Blood.

§14-1-20. Adoption.

The Tribal Council is authorized in its sole discretion to enroll any other individual, provided that the applicant has at least one-quarter (1/4) Indian blood as determined by lineage from a Federally recognized tribe. There shall be no right to appeal from a decision of the Tribal Council denying a request to adopt a person not otherwise entitled to enrollment.

§14-1-21. Honorary Tribal Membership.

The Governor, in his sole discretion, may bestow honorary tribal membership upon any individual. Such honorary tribal membership shall entitle such individual to the title "honorary tribal member," but shall not otherwise entitle such individual to participate in any of the benefits of tribal membership.

§14-1-22. Member of One Tribe Only.

No person may be an enrolled member of the Tribe and, at the same time, be an enrolled member of any other Federally recognized tribe. A member's enrollment will automatically cease upon his enrollment in another tribe.

§14-1-23. Petition for Removal of Name From Roll.

Any person may petition the Tribal Council for removal of his own name from the tribal roll. The Tribal Council, after consideration of the petition, is authorized to remove the name of such person from the tribal roll.

§14-1-24. Maintenance of the Membership Roll.

The tribal secretary shall preserve and maintain the tribal membership roll.

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TITLE XV. ZUNI PROBATE CODE

CHAPTER 1. GENERAL PROVISIONS

§15-1-1. Jurisdiction.

The Zuni Tribal Court shall have jurisdiction to appoint administrators, determine heirs, appoint executors, determine the validity of wills, and to probate and distribute the wills and estates of any member of the Zuni Tribe with respect to non-trust personal property and non-restricted or non-trust real property located on the Reservation. The Tribal Court shall exercise such functions over restricted or trust property to the greatest extent allowed by law.

§15-1-2. Construction.

These provisions relating to decedent's estates shall be liberally construed and applied to give effect to the underlying policy of distributing a decedent's property according to the decedent's intent where there is a valid will manifesting such intent, or according to the provisions of this Probate Code where there is not a valid will.

§15-1-3. Reference to Other Law.

The law of the State of New Mexico relative to decedent's estates may be referred to and followed in situations where this Probate Code provides no guidance regarding the handling of decedents' estates, but only so far as such law is not inconsistent with the provisions and spirit of this Probate Code.

§15-1-4. Effect of Fraud and Evasion.

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Probate Code or if fraud is used to avoid or circumvent the provisions or purposes of this Probate Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud including restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not. Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 5 years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime, which affect the succession of his estate.

§15-1-5. Evidence as to Death or Status.

In proceedings under this Probate Code the Federal Rules of Evidence as used in the trial court are applicable unless specifically displaced by the Probate Code. In addition, the following rules relating to determination of death and status are applicable:

(1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;

(2) a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive, is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

(3) a person who is absent for a continuous period of 5 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

§15-1-6. Practice in Court.

Unless specifically provided to the contrary in this Probate Code or unless inconsistent with its provisions, the Zuni Rules of Civil Procedure including the rules concerning vacation of order and appellate review govern formal proceedings under this Probate Code.

§15-1-7. Records and Certified Copies.

The Clerk shall keep a file for each decedent of all documents filed with the Court under this Probate Code and shall keep a numerical index of all such estates to facilitate access to such records. Upon payment of a fee (not to exceed fifty cents per copy page), the Clerk shall issue certified copies of any document or paper so filed.

§15-1-8. Jury Trial.

If properly demanded, a party is entitled to a trial by jury in any proceeding in which any genuine controverted question of fact arises, or the trial judge may order a jury trial on any such issue on his own motion. Otherwise all proceedings under this Probate Code shall be handled by a trial judge or the Clerk, as is appropriate.

§15-1-9. Oath or Affirmation on Filed Documents.

Except as specifically provided in this Probate Code, every document filed with the Court under this Probate Code shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and the penalties for perjury shall follow deliberate falsification therein.

§15-1-10. Notice.

(1) If notice of a hearing on any petition or other matter is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(a) by mailing a copy thereof at least 14 days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known;

(b) by delivering a copy thereof to the person being notified personally at least 14 days before the time set for the hearing; or

(c) if the address, or identity of any person is not known and cannot be ascertained by reasonable diligence, by posting a copy of the notice in at least three (3) conspicuous public places on the Reservation at least 14 days before the time set for the hearing.

(2) The Court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made at or before the hearing and filed in the proceeding.

(4) A person, including a guardian ad litem, or other fiduciary, may waive notice by writing signed by him or his attorney and filed in the proceeding.

§15-1-11. Renunciation of Succession.

A person (or his personal representative) who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument with the Court not later than six months after the decedent's death or the time at which it is determined that the person is entitled to take property if such is not known at the time of death. The instrument shall (i) describe the property or part thereof or interest therein renounced, (ii) be signed by the person renouncing and (iii) declare the renunciation and the extent thereof. Upon proper renouncement, the interest renounced passes as if the renouncing person had pre-deceased the decedent or donee.

§15-1-12. Effect of Divorce, Annulment, and Decree of Separation.

A person who is divorced from a decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation, which does not terminate the status of husband and wife, is not a divorce for purposes of this Probate Code.

§15-1-13. Effect of Homicide on Intestate Succession, Wills, Joint Assets, Life Insurance and Beneficiary Designations.

(1) A surviving spouse, heir or devisee who criminally and intentionally kills the decedent is not entitled to any benefits under the will or under this Probate Code, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had pre-deceased the decedent.

(2) Any joint tenant who criminally and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who criminally and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer, shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of an offense containing the elements of criminal and intentional killing is conclusive for purposes of this section. In the absence of a conviction of criminal and intentional killing, the Court may determine by a preponderance of evidence whether the killing was criminal and intentional for purposes of this section.

CHAPTER 2. INTESTATE SUCCESSION

§15-2-1. Intestate Estate.

When any member of the Tribe dies without disposing of all or part of his property by a valid will, all such property not so disposed will pass in accordance with the laws of Intestate Succession of the State of New Mexico.

CHAPTER 3. ADMINISTRATION OF INTESTATE ESTATE

§15-3-1. Petition.

(1) When any member of the Tribe dies leaving an intestate estate subject to the jurisdiction of the Zuni Tribal Court, any person claiming to be an heir of the decedent, or the Tribe, may petition the Court for a determination of the heirs of the decedent and for the distribution of such property. The petition shall contain the names and addresses of all persons known to the petitioner who may be entitled to share in the distribution of the estate.

(2) Whenever there is a valid will probated by the Court who does not dispose of all of the decedent's property, a determination of the heirs entitled to such property and its distribution shall be made by the Court at or before the time the remainder of the estate is distributed without the necessity of a separate petition and proceeding.

§15-3-2. Administrator of Intestate Estate.

(1) If an executor is appointed over a decedent's property, which is disposed of by a valid, will shall likewise assume authority over the decedent's intestate estate and administer it with the rest of the decedent's estate.

(2) Whenever it reasonably appears that such is necessary to the preservation, administration and/or distribution of a decedent's intestate estate, the Court shall appoint an administrator over the estate. It shall not be necessary to appoint an administrator if the value of the decedent's property appears to be less than \$1,000.00 in value, no problems in administering the estate are foreseen, and no one requests that one be appointed.

(3) The following persons, if legally competent, shall be afforded priority in order of their listing for appointment as administrator: the surviving spouse, children over 18 years of age in descending order of age, other blood relatives in order of their closeness of relationship; any adult tribal member.

(4) The duties of the administrator shall be:

(a) to take possession of all property of the decedent subject to this Probate Code;

(b) within one month of his appointment make an inventory and appraisal of such property and file it with the Court;

(c) determine and file with the Court a list of all known relatives of the decedent, their ages, and their relationship to the decedent;

(d) subject to the approval of the Court, ascertain and pay all of the debts and legal obligations of the decedent;

(e) prosecute and defend actions for or against the estate;

(f) distribute the estate in accordance with the order of the Court and file receipts with the Court showing distribution of the estate.

(5) The Administrator shall file a bond in an amount to be set by the Court to insure his faithful, honest performance of his duties as administrator. Unless otherwise made to appear necessary or desirable, no bond shall be required of an administrator who is the spouse or child of a decedent.

§15-3-3. Appointment of Administrator.

(1) Upon receipt of a petition to administer as intestate estate, the clerk shall schedule a hearing at which an administrator will be appointed. Said hearing shall be scheduled far enough in advance to allow the required notice to be made.

(2) Notice of the hearing shall be made by the petitioning party or by the Clerk if the Tribe is the petitioning party and shall also be posted in a conspicuous place in the Court Building.

(3) The Court shall determine who is the proper person to appoint as Administrator, and if such person manifests his willingness to serve, order his appointment as administrator.

§15-3-4. Oath of Administrator; Letters of Administration.

(1) Upon his appointment as administrator, the person appointed shall take an oath to be prescribed by the Court to the effect that he will faithfully and honestly administer the estate.

(2) Upon taking the oath and filing the bond, if any is required, the administrator shall be granted Letters of Administration as proof of his appointment.

§15-3-5. Notice to Creditors.

The administrator of the estate or the Clerk if no administrator is appointed shall cause notice to creditors to be posted in at least three conspicuous places on the Reservation and published for three consecutive weeks in a publication of general distribution on the Reservation. Said notice shall state that creditors have 90 days from the date of the first publication of the notice to present their claims to the administrator or Clerk and that only those claims so presented may be paid by the estate.

§15-3-6. Payment of Creditors.

(1) Payment to creditors of the decedent shall be made by the administrator or by the clerk if no administrator is appointed only upon the order of the Court after determining the validity of the claims by affidavit or personal testimony of the claimant.

(2) All just claims of creditors allowed by the Court shall be paid before distribution of the estate but shall be paid only after payment of the family allowance and homestead allowance as provided herein.

§15-3-7. Accounting.

Prior to the distribution of every estate for which an administrator has been appointed, such administrator shall render an accounting to the Court, for its approval, of all receipts and disbursements from the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney's and/or administrator's fees involved for which approval for payment is sought. In estates in which no administrator is appointed, the Clerk shall account to the Court for all transactions relating to the estate.

§15-3-8. No Taker.

If there is no taker of the intestate estate, the intestate estate passes to the Tribe.

§15-3-9. Advancements.

If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

§15-3-10. Debts to Decedent.

A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

§15-3-11. Status of Heirs.

No person is disqualified to take as an heir because he or a person through whom he claims is not a member of the Zuni Tribe or because he does not live on the Reservation.

CHAPTER 4. WILLS

§15-4-1. Who May Make a Will.

Any person 18 or more years of age that is of sound mind may make a will.

§15-4-2. Execution.

Except as provided for holographic will, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least two (2) persons, each of whom witnessed either the signing by the testator of the will or witnessed the testator's acknowledgment of the signature placed at his direction on the will.

§15-4-3. Holographic Will.

A will, which does not comply with the next preceding section is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator and if it is dated.

§15-4-4. Self-Proved Will.

An attested will may, at the time of its execution or at any subsequent date, be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a notary public or Tribal judge and evidenced by the notary or judge's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF _____

COUNTY OF _____

We, _____ and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at the time 18 or more years of age, of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 20____.

(SEAL)

(Signed)

(Official capacity of officer)

§15-4-5. Who May Witness.

- (1) Any person generally competent to be a witness may act as a witness to a will.
- (2) A will or any provision thereof is not invalid because the will is signed by an interested witness.

§15-4-6. Choice of Law as to Execution.

A written will is valid if executed in compliance with this Probate Code or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

§15-4-7. Revocation by Writing or by Act.

A will or any part thereof is revoked:

- (1) by a subsequent will which revokes their or will or part expressly or by inconsistency; or
- (2) By being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

§15-4-8. Revocation by Divorce; No Revocation by Other Changes of Circumstances.

If, after executing a will, the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provide otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. A decree of separation, which does not terminate the status of husband and wife, is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

§15-4-9. Revival of Revoked Will.

- (1) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he intended the first will to take effect as executed.
- (2) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

§15-4-10. Incorporation by Reference.

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

§15-4-[11.] Events of Independent Significance.

A will may dispose of property by reference to acts and events, which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution or revocation of a will of another person is such an event.

§15-4-12. Requirement That Devisee Survive Testator by 120 Hours.

A devisee that does not survive the testator by 120 hours is treated as if he predeceased the testator, unless the will of the decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

§15-4-13. Simultaneous Death.

(1) Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise.

(2) Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

(3) Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(4) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(5) These provisions on simultaneous death shall not apply in cases where the decedent has made provision for a different distribution in a will, trust, deed or contract of insurance.

§15-4-14. Rules of Construction and Intention.

The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this Probate Code apply unless a contrary intention is indicated by the will.

§15-4-15. Construction That Will Passes All Property; After Acquired Property.

A will is construed to pass all property, which the testator owns at his death including property acquired after the execution of the will.

§15-4-16. Anti-Lapse; Deceased Devisee; Class Gifts.

If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he pre-deceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree than those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

§15-4-17. Failure of Testamentary Provision.

(1) Except as provided in the next preceding section if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(2) Except as provided in the next preceding section if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

§15-4-18. Exercise of Power of Appointment.

A general residuary clause in a will, or a will making general disposition of all the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

§15-4-19. Non-Exoneration.

A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

§15-4-20. Construction of Generic Terms to Accord With Relationships as Defined for Intestate Succession.

Half-bloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father or unless paternity has been judicially determined during the life of the father.

§15-4-21. Ademption by Satisfaction.

Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the

devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

(Annotations: Special Note: Section identified as "15-4-13 Events of Independent Significance" is incorrectly numbered. Corrected Section number to 15-4-11 above).

CHAPTER 5. PROBATE OF WILLS

§15-5-1. Petition for Letters Testamentary.

A petition for Letters Testamentary may be made by any person having possession of a decedent's will. The petition must be in writing, signed by the petitioner, and shall state the basis for the Court's jurisdiction, the names of the heirs of the decedent, if known, and the name or names of any person specified in the will as executor and the address of such person if known. The original copy of the will shall be submitted to the Court with the petition.

§15-5-2. Qualification of Executor.

The Court shall appoint an executor to administer the estate. The executor shall be a competent adult Tribal member and preference shall be given, if such persons are otherwise qualified, to the person named in the will as such, followed by the surviving spouse or child of the decedent over 18 years of age with preference given in descending order of age.

§15-5-3. Appointment of Executor.

(1) Upon receipt of a petition for Letters Testamentary, the clerk shall schedule a hearing at which an executor will be appointed and Letters Testamentary authorized. The hearing shall be scheduled so that adequate notice to interested persons can be made.

(2) Notice of the hearing shall be made by the petitioning party to all persons named as takers under the will, and to all known heirs of the decedent if different from the named takers, and also posted in a conspicuous place in the Court Building.

(3) At the hearing, the Court shall first determine the validity of the decedent's will and then appoint an executor to administer the estate according to the terms of this Probate Code and the decedent's will.

(4) Letters Testamentary shall be granted to the person appointed as executor upon his taking an oath, to be prescribed by the Court, to the effect that he will faithfully and honestly administer the estate, and upon his filing the bond, if required.

§15-5-4. Duties of Executor, Bond.

The duties of the executor shall be the same as those prescribed in this Probate Code for the Administrator of an intestate estate, and he shall file a bond in a like manner and subject to the same exceptions.

§15-5-5. Creditors.

Notice to creditors, determination of the validity of claims, and payment of claims shall be handled as prescribed for intestate estates.

§15-5-6. Accounting.

Prior to the distribution of the estate remaining after payment of all just claims and priority payments, the executor shall submit to the Court for approval an accounting of all receipts and disbursements from the, estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney's and/or executor's fees involved for which approval for payment is sought.

§15-5-7. Distribution; Closing Estate.

(1) When it is made to appear to the Court that an estate is ready to be distributed, the Court shall order such distribution according to the provisions of the decedent's will or the rules of intestate succession whichever is applicable, and according to the rules set forth in this Probate Code.

(2) The estate shall be closed and the personal representative of the estate dismissed and his bond, if any, released upon filing with the Court receipts showing that the estate is fully distributed, and also upon filing the personal representative's affidavit that the estate is fully administered and ready to be closed. "Personal representation" as used herein includes both administrators and executors.

§15-5-8. Distribution; Order in Which Assets Appropriated; Abatement.

(1) Except as provided in subsection (2) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (a) property not disposed of by the will; (b) residuary devises; (c) general devises; (d) specific devises. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may.

(3) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

§15-5-9. Property Discovered After Estate Closed.

An estate may be reopened whenever necessary to dispose of a decedent's property discovered after his estate has been closed. The Court shall order distribution of the property to the person or persons entitled thereto after making whatever orders appear necessary to assure a just participation of the after discovered property in the expenses of the estate.

§15-5-10. Personal Representative and Attorney's Fees.

(1) An administrator or executor may elect to receive a fee of 5% of the value of the gross estate but not less than \$50.00 to be paid from the estate prior to final distribution of the estate.

(2) An attorney who represents the personal representative of an estate for purposes of administering the estate may be paid from the estate a fee of 5% of the gross estate, but not less than \$50.00. A greater amount may be approved upon a showing of extraordinary service to the estate.

CHAPTER 6. FAMILY RIGHTS

§15-6-1. Spouses' Right to Elective Share.

If a married Tribal member domiciled on the Reservation dies, the surviving spouse has a right to elect to take an elective share of one-third of the estate of the decedent, less funeral and administration expenses, family allowance and enforceable claims against the estate, plus the value of all property in excess of \$1,000.00 transferred by the decedent to any person other than the surviving spouse in the 3 years preceding his death to which the surviving spouse has not joined by written consent.

§15-6-2. Right of Election Personal to Surviving Spouse.

The right of election of the surviving spouse may be exercised only during his lifetime by him. In the case of an incompetent person, the right of election may be exercised only by order of the court in which protective proceedings as to his property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy.

§15-6-3. Waiver of Right to Elect and of other Rights.

The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits, which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

§15-6-4. Proceeding for Elective Share; Time Limit.

(1) The surviving spouse may elect to take his elective share in the estate by filing in the Court and mailing or delivering to the personal representative a petition for the elective share within 3 months after the publication of notice to creditors for filing claims which arose before the death of the decedent. The Court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(2) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the estate whose interest will be adversely affected by the taking of the elective share.

(3) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the Court.

(4) After notice and hearing, the Court shall determine the amount of the elective share and shall order its payment from the assets of the estate or by contribution as appears appropriate under the following section. If it appears that a fund or property included in the estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the Court nevertheless shall fix the liability of any person who has any interest in the trust fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the Court may be enforced as necessary in a suit for contribution or payment.

§15-6-5. Effect of Election on Benefits by Will.

(1) An election by a surviving spouse does not affect the right of such spouse to participate in a family allowance but the value of any part of the estate passing to the surviving spouse by testate or intestate succession shall, unless renounced by the spouse in his petition, be counted against his elective share.

(2) When an election to take an elective share has been made and there is insufficient property in the estate which is not specifically disposed of to pay the elective share, liability for payment of the elective share shall be equitably apportioned among the other recipients of the estate in proportion to the value of their interests therein.

(3) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time transferred.

§15-6-6. Omitted Spouse.

(1) Notwithstanding the provisions of §15-6-1 of this Code, if a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) In satisfying a share provided by this section, the devises made by the will abate as provided in the section of this Probate Code which concerns "abatement."

§15-6-7. Pretermitted Children.

(1) If a testator fails to provide in his will for any of his children living or born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(a) it appears from the will that the omission was intentional; or

(b) when the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or

(c) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) If at the time of execution of the will, the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(3) In satisfying a share provided by this section, the devises made by the will abate as provided in the section of the Probate Code which concerns "abatement."

§15-6-8. Homestead Allowance.

A surviving spouse of a decedent who was domiciled on the Reservation is entitled to a homestead allowance of \$2,500.00. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$2,500.00 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share.

§15-6-9. Exempt Property.

In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled on the Reservation is entitled from the estate to value not exceeding \$2,500.00 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than \$2,500.00, or if there is not \$2,500.00 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$2,500.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

§15-6-10. Family Allowance.

In addition to the right to homestead allowance and exempt property, if the decedent was domiciled on the Reservation, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of election share. The death of any person entitled to family allowance terminates his right to allowances not yet paid.

§15-6-11. Source, Determination and Documentation.

If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He may determine the family allowance in a lump sum not exceeding \$3,600.00 or periodic installments not exceeding \$300.00 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the Court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

END OF TITLE XV. ZUNI PROBATE CODE

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TITLE XVI. ZUNI BUSINESS LICENSE AND TAX CODE [Amended June 2, 1995, Resolution No. M70-95-E055]

CHAPTER 1. GENERAL PROVISIONS

§16-1-1. Statement of Purpose.

(1) The Zuni Tribal Council of the Pueblo of Zuni hereby enacts the following Zuni Business License and Tax Code for all matters regarding assessments and collection of licenses and taxes imposed by the Tribe, in furtherance of its policy of exercising its sovereign power to tax and regulate business activities within the exterior boundaries of the Zuni Indian Reservation. Tax revenues collected pursuant to this Code are to be used to provide governmental services, which improve the health and welfare of both members and non-members of the Tribe residing on the Reservation, and to provide for the safety of all persons and property found within Reservation boundaries. To finance and strengthen these tribal governmental services, the Zuni Tribal Council of the Zuni Tribe hereby adopts and incorporates the ordinances set forth as Chapters, Sections or Provisions, in this Code, as well as any subsequent tax ordinances and amendments thereto which the Zuni Tribal Council may, from time to time, deem necessary.

(2) It is the purpose of the Zuni Business License and Tax Code to establish procedures and requirements to govern the conduct of business on the Zuni Reservation.

(3) The Zuni Taxation and Revenue office is established to respect traditional Zuni livelihoods and customs and their contributions to tribal governments; to preserve and protect the health and welfare of Zuni members; to require modern businesses to pay a fair share for Zuni government services; and to collect revenues to support the Zuni Tribal government and to provide essential public services.

§16-1-2. Definitions Applicable to the Zuni Business License and Tax Code.

(1) "Director" shall mean the director of the Zuni Taxation and Revenue office.

(2) "Established Business" shall mean a business set up at a permanent location with an approved business lease.

(3) "Itinerant Business" shall mean a business of a person who travels from place to place.

(4) "License" shall mean a formal permission to carry out a business authorized under this Code. A license shall be a revocable, nontransferable privilege to do a specified thing.

(5) "Person" shall include individuals, groups of individuals, firms, partnerships and other associations, whether incorporated or not.

(6) "Surety Bond" shall mean a written undertaking by one or more persons or companies acceptable to the Director whereby such persons or companies obligate themselves to be liable for another's debts, defaults or obligations. No surety bond shall be acceptable under this Code unless the bond is in favor of the Tribe, and sureties thereto consent in writing to the jurisdiction of the Tribe and its Tribal Courts for all purposes related to enforcing the obligations created therein by this Code or other Zuni law.

(7) "Imitation Zuni Jewelry" shall mean any jewelry or precious-metal ware which is not in fact made by Zuni Indians, and which in any way resembles or is represented to resemble

jewelry of Zuni manufacture; or any Indian Arts or Crafts which according to standards established by the Zuni Tribe or the standard prevalent among Zuni craftsmen is imitation, of poor quality or spurious.

(8) "Tribe" shall mean the Zuni Indian Tribe also called the Pueblo of Zuni.

(9) "Tax Office" shall mean the Zuni Taxation and Revenue office responsible for day-to-day administration of the Zuni Business License and Tax Code, under the supervision and control of the Director.

(10) "Tax" shall mean the total amount of each tax imposed and required to be paid, withheld and paid or collected and paid under the provisions of any tribal ordinance, subject to administration and enforcement according to the provisions of this Tax Code and, unless the context otherwise requires, includes the amount of any tax, interest or civil penalty relating thereto.

(11) "Property" shall mean any property or rights to tangible property, real or personal, or any intangible property of a taxpayer.

(12) "Taxpayer" shall mean a person liable for payment of any tax, or a person responsible for withholding and payment of or for collection and payment of any tax, or a person to whom a tax assessment has been made if the assessment remains uncollected.

(13) "Reservation" shall mean the Zuni Indian Reservation.

(14) "Code" shall mean the Zuni Business License and Tax Code.

(15) "Trader" shall mean any person who makes it his business to buy goods to sell the same at a profit. The term does not include one whom converts them into another form of property by his skill and labor within the Zuni Reservation.

(16) "Service" shall mean all activities engaged in for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property.

§16-1-3. Enforcement.

(1) The Zuni Taxation and Revenue office shall have authority to enforce the provisions of this Code by injunction or otherwise in any civil proceeding maintained in the name of the Tribe or otherwise.

(2) Cancellation of any license or other privilege granted under this Code shall be handled in accordance with Chapter 4 of this Code.

(3) Any person, upon entering the Zuni Reservation, consents to the jurisdiction of Zuni Tribe over his activities while on the Zuni Reservation.

(4) Any person found trading or involved in any commercial enterprise on the Zuni Reservation without a license shall be subject to confiscation of all goods found in his possession and may be expelled from the Zuni Indian Reservation if that person is not a member of the Zuni Indian Tribe. Such person is also subject to impoundment of transporting vehicle, until all license fees and taxes due have been paid. A speedy hearing shall be held whenever property is detained.

(5) Any person is subject to forfeiture of bond in whole or in part for any violation of this Code, including non-payment of taxes on a timely basis.

CHAPTER 2. LICENSING OF BUSINESSES

§16-2-1. Zuni Taxation and Revenue Office.

(1) The Director of the Zuni Taxation and Revenue Office shall be responsible for reviewing and approving or rejecting all applications for business licenses, for issuing and renewing business licenses, and for investigating abuses or violations of this Code or any license issued hereunder and recommending and prosecuting proceedings to cancel business licenses.

(2) The Director may adopt rules and regulations not inconsistent with this Code to govern the procedure for issuance of business licenses, the terms and conditions applicable to business licensees, record keeping and inspection requirements for licensees, and other matters reasonably related to the regulation and control of businesses on the Reservation.

(3) The Director or staff of the Zuni Taxation and Revenue Office shall receive applications for business licenses, keep records and files, and perform such other functions, relating to this Code as the Director or the Tribal Council shall direct.

§16-2-2. License Required; Exemptions.

(1) Unless expressly accepted herein, every business conducted on the Zuni Reservation shall hold a valid business license issued by the Director.

(2) These licensing requirements shall not apply to the following:

- (a) Any non-commercial activity or operation of the Zuni Tribe.
- (b) Any business specifically authorized and accepted by the Tribal Council.
- (c) Jewelry making or other arts and crafts production carried on by Zuni or other Native American individual or family
- (d) Livestock or other agricultural commodity production carried on by a Zuni or other Native American individual or family.
- (e) Non-profit, educational, or charitable organizations.

(3) It shall be civil offense for any person subject to these licensing requirements to conduct business on the Zuni Reservation without first obtaining such a business license, or to conduct business after such a license has expired or been suspended or revoked, or to conduct business in a manner not authorized by the license, or to violate any of the terms or conditions of the license or any rules and regulations adopted by the Director.

(4) The Director or the Tribe may, but need not, pursue informal remedies or seek civil restraint or license revocation or suspension for violation hereof.

(5) A business license can be suspended or revoked only for just cause.

§16-2-3. Classification of Licenses.

(1) In addition to the classification of licenses specifically established in the succeeding sections, the Director with the approval of the Tribal Council and Governor may establish additional classifications of business licenses and prescribe the applicable requirements and terms and conditions relating thereto.

(2) Persons carrying on more than one class of business on the Reservation will be required to secure a license for each class of business.

(3) Zuni Business Licenses shall be available and are required for persons carrying on the following classes of activities:

Class 1. Jewelry, Arts and Crafts.

Buyers for resale of Zuni Indian made jewelry and other arts and crafts items, wholesale sellers of turquoise, silver or other products used for making of jewelry and other arts and crafts items or retail sellers of Zuni Indian made jewelry and other arts and crafts items on a regular basis.

Class 2. Established businesses.

All commercial retail businesses located on the Zuni Reservation including, but not limited to, service stations, grocery stores, hardware stores, Laundromats, furniture stores, insurance, offices, bookstores and any other commercial, retail business. Each business must be licensed separately, regardless of ownership or location.

Class 3. Itinerant businesses.

Other retail merchants selling from their vehicle or temporary stands, fruit, vegetables, home appliances, house wares, books, magazines, insurance and the like. This class shall include all carnival companies, circuses, theatrical companies, musical and athletic performances, all person, firms, or companies conducting or operating portable dance pavilions, animal ride, mechanical devices such as ferries wheels, carousel, or other devices for carrying passengers, and all persons operating games of skill.

Class 4. Contractors.

All building and construction activities and property that will be involved in a construction project, except those for Zuni religious purposes.

§16-2-4. Jewelry and other Indian Arts and Crafts License.

(1) Any person, including itinerant business licensees, otherwise subject to the licensing requirements of this Code who purchases or otherwise obtains jewelry and/or other Indian arts and crafts produced on the Reservation for purposes of sale or resale on or off of the Reservation shall be required to have a Class 1 Jewelry, Arts and Crafts License from the Tribe.

(2) A Class 1 Jewelry, Arts and Crafts license shall be required of any person buying or selling jewelry, arts or crafts goods valued at more than one thousand dollars (\$1,000) in a six (6) month period.

(3) Established businesses with jewelry, arts and crafts sales of less than fifty thousand dollars (\$50,000) annually may receive a limited class 1 license.

§16-2-5. Established Business License.

(1) A person of this class may conduct a business to (1) purchase Zuni Indian made jewelry and other arts and crafts; (2) sell turquoise, silver, gold, or other products used for the making of Indian jewelry; (3) sell Zuni Indian made jewelry and other arts and craft items on a regular basis, provided a separate Class 1 Jewelry, Arts and Crafts License is obtained.

(2) A license of this class shall not be issued unless the proposed licensee has a right to the use of the land and buildings in which the business is to be conducted.

(3) A business license issued to established businesses shall be issued to the owner of the business. The license shall be displayed in a conspicuous place within the business establishment.

(4) This class includes electric utilities, heating fuel suppliers and telephone companies who do business in Zuni, regardless of the location of their business headquarters.

§16-2-6. Itinerant Business License.

A business license issued to an itinerant business shall be issued to the owner of the business. The owner of a business, as it is intended under this subsection, shall mean the named person who has authority to conduct its operation. No license shall be issued to more than one (1) person, regardless of whether such business is a partnership, corporation, or company and shall not be transferable. Upon issuance of a license to an itinerant business or person, he shall be issued an identification badge signifying this privilege. Said licensee must, at all times, while conducting business on the reservation, display his badge of identification upon his person. Any person found doing business without such badge and identification shall be subject to the penalties prescribed in this Code for doing business without a license.

§16-2-7. Contractor's License.

(1) Every person who engages in building or construction contracting for another shall be required to have a Contractor's License specifying the type of work authorized to be done (e.g. general contracting or electrical or plumbing, etc.).

(2) In addition to demonstrating proof of training or competence as a condition to receiving a Contractor's License, any person receiving a Contractor License shall be subject to any limitations as to type of work to be performed indicated in the license.

(3) Any person receiving a Contractor's License shall be required to conform all work performed to not less than the minimum Uniform, Federal or any Tribal codes, standards or regulations in existence or which may be established to govern the type of work performed.

(4) All contractors or other individuals subject to the requirements of obtaining a Contractor's License shall, before any work is commenced, obtain a surety bond in an amount equal to the contract price, for each separate contract to be performed, and conditioned for the faithful performance of the contract and prompt payment for materials furnished and labor performed under the contract. Such bond shall run to the owner of the project and to any person who has furnished labor or materials and not been paid within forty (40) days, and such persons shall have a direct right of action against the sureties on the bond for enforcement of

payment or completion of the project. Such bond shall be exhibited to any interested person upon demand, and a copy of the bond shall be filed with the Director.

(5) A person or group who performs less than three jobs per year, where each job is worth less than \$1,000, need not obtain a Contractor's License.

§16-2-8. Application for License.

(1) The applicant for any Zuni Business License shall apply in writing on a form provided by the Director setting forth the following information:

(a) The full name and address of the applicant, and each of its owners, (residential address, not post office box number, must be provided).

(b) Three responsible references, with names and addresses.

(c) The firm name and a copy of Articles of Incorporation and-by-laws of the firm if incorporated.

(2) Upon request of the Director, the applicant shall furnish the following information:

(a) The capital invested or to be invested, and of this the amount of capital owned and the amount borrowed or to be borrowed.

(b) The name of the lender of any borrowed capital, the date due, the rate of interest to be paid, and the names of any endorser and security.

(c) A copy of any contract or trade agreement whether oral or written with creditors or financing individuals or institutions, including any stipulations whereby, financing fees are to be paid.

§16-2-9. Fees and Bonds.

(1) Application for a Class 1 license or for the renewal of a Class 1 license shall be accompanied by a surety bond or other security acceptable to the Director. Such surety shall be for the duration of the license and shall guarantee the licensee's faithful compliance with the terms and conditions of this Code, with any rules and regulations adopted by the Director, the payment of any fines or penalties assessed against the licensee for any violation of this Code, and for any delinquent taxes. The surety must be in the name of the proposed licensee and the Zuni Tribe in the amount of \$10,000, or a sum otherwise designated by the Director.

(2) The following license fees shall be paid to the Zuni Tribe by businesses subject to this Code. These fees shall be in addition to any fees required by regulations of the Federal Government.

Class 1.

(a) Itinerant businesses, and others, who are wholesale buyers of Zuni Indian made jewelry and other arts and crafts item, wholesale sellers of turquoise, silver or other production used for making jewelry and other arts and crafts items on a regular basis: \$1,000 per year. In the discretion of the Director, License fees may be paid at the rate of \$275 for each calendar quarter or \$75 each day the applicant does business in Zuni. Fee schedule applies only

to Non-Indians. Zuni Enroll Members and Non-Zuni Indians are exempt. The Zuni Tribal Council may change or adjust the rates per Tribal Resolution at their discretion.

(b) However, an established business holding a Class 2 license and wishing to sell jewelry, arts and crafts at retail may obtain a full class 1 license upon application and payment of \$1,000 annual fee.

(c) Established businesses selling less than \$50,000 worth of jewelry, arts and crafts annually may receive a limited class 1 license upon application and payment of a \$100 annual fee.

(d) Class 2 license fees shall be credited toward the Class 1 license fees.

Class 2.

All commercial retail businesses located on the Zuni Reservation including, but not limited to, service stations, grocery stores, hard-ware store, Laundromats, furniture stores, insurance offices, bookstores and any other commercial, retail business: \$500 per year for businesses with gross annual sales exceeding \$150,000; \$75 per year for businesses with gross annual sales less than \$150,000.

Class 3.

Other retail merchants selling from their vehicles or temporary stands, fruit, vegetables, home appliances, house wares, books, magazines, insurance and the like: \$10 per day. Organizations, clubs or committees sponsoring amusement companies shall pay \$50 per day in license fees to the Zuni Tribe. Such fees will be deducted from the total amount of revenues received from the Amusement Company.

Class 4.

Contractor License: Annual Fees shall be \$25 for contractors doing less than \$50,000 worth of work annually; \$75 for contractors doing between \$50,000 and \$100,000 North of work annually; \$100 for contractors doing more than \$100,000 worth of work annually.

§16-2-10. License Period and Renewal of Licenses.

(1) The License period for all licenses shall be one calendar year, unless otherwise specified by the Director.

(2) Application for renewal of any business license may be not more than ninety (90) nor less than sixty (60) days prior to the expiration of the license, shall be made on a form to be supplied by the Director, and shall be accompanied by all required fees and bonds, and delinquent taxes, if any.

§16-2-11. Duties of Licensee.

(1) All licenses issued hereunder shall be conspicuously displayed in all businesses having a fixed place of business on the Reservation and shall be carried in the possession of all other licensees on the Reservation while conducting business. The Director may authorize the issuance of licensee identification badges to be displayed by Itinerant Business, Jewelry, Arts and Crafts, Contractor and other licensees and their employees or agents.

(2) The person to whom the license is issued shall, for all purposes related to the business license, be responsible for the entire operation of the business and for the conduct of his officers, agents and employees in relation thereto, and shall file and keep current with the Zuni Taxation and Revenue Office a list of all such officers, and agents.

(3) By April 30 of each year, all licensees shall file with the Zuni Taxation and Revenue Office a financial statement including an income statement and balance sheet prepared by a Certified Public Accountant, or otherwise verified to the satisfaction of the Director.

§16-2-12. Restriction on Traders and Business Licensees.

(1) Conduct of Business. Conduct of business shall be carried out as specified in a license. No business shall be conducted on the streets, or thoroughfares or property of the Pueblo or within the boundaries of other business establishments of the reservation without written permission of Tribe or the established business affected.

(2) Trade in Antiquities Prohibited. No person shall deal in Zuni religious objects; or in objects of antiquity artifacts, or art objects removed from any historic or prehistoric ruin or monument.

(3) Imitation Zuni Jewelry, Arts and Crafts Prohibited. It shall be forbidden for any person to introduce or have in his possession for disposition or sale to Indians or others, within the exterior boundaries of the Zuni reservation, any imitation Zuni jewelry or any Indian arts and crafts, which are according established standards, imitation or spurious.

(4) Violation of this section can result in loss of each and every Zuni Business License held by the violator.

CHAPTER 3. ADMINISTRATION: ZUNI TAXATION AND REVENUE OFFICE

SECTION 1. Establishment of the Zuni Taxation and Revenue Office

§16-3-1.1. Establishment.

There is hereby established the Zuni Taxation and Revenue Office as part of the Executive Branch of the Zuni Tribe.

§16-3-1.2. Powers.

The Director of the Zuni Taxation and Revenue Office shall have the following powers:

(a) To review and study all sources of income and value within the Zuni Reservation and all possible taxes thereon; and

(b) As authorized by this Code, to levy and collect taxes and licenses; and

(c) To inform and educate the businesses of Zuni regarding the tax codes and procedures; and

(d) To adopt such rules and regulations as deemed necessary for the proper functioning of the Zuni Taxation and Revenue Office.

§16-3-1.3. Authority, Responsibilities and Duties.

The Zuni Tax Director is hereby authorized and directed to:

- (a) Report and be responsible to the Zuni Tribal Council through the Tribal Administrator.
- (b) Formulate overall administrative and operating policies for the implementation of the Zuni Business License and Tax Code and take such action as shall be deemed necessary for the accomplishment and enforcement thereof.
- (c) Create staff, oversee and promulgate rules for the Zuni Taxation and Revenue Office.
- (d) Prepare programs and budgets for the Tax Office and participation in review thereof.
- (e) Take any and all additional action within the Director's authority to accomplish the purposes of the Zuni Taxation and Revenue Office.
- (f) Conduct educational programs to inform all businesses within the Zuni Reservation about the tax code and tax procedure.

SECTION 2. Administration

§16-3-2.1. Enforcement by the Director.

The Director shall enforce the provisions of this Code and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of it or any amendment thereto, including any provision of any chapter of the Code.

§16-3-2.2. Employment of Experts.

The Director may employ accountants, auditors, investigators, consultants, assistants and clerks necessary for the efficient administration of the Code and may delegate authority to a Tax Office representative to conduct hearings, prescribe regulations and perform any other duties imposed by the Code.

§16-3-2.3. Administrative Regulations, Rulings, Instructions, and Others of the Director.

- A. The Director is empowered and directed to issue all regulations, rulings, instructions or orders necessary to implement and enforce any provision of this Zuni Tax Code.
- B. Definitions:
 - (1) "Regulations" are written statements of the Director, of general application to taxpayers, interpreting and exemplifying the ordinances to which they relate;
 - (2) "Rulings" are written statements of the Director, of limited application to one or a small number of taxpayers, interpreting the ordinances to which they relate, ordinarily issued in response to a request for clarification of tax consequences of a specified set of circumstances;

(3) "Orders" are written statements of the Director implementing its decision after a hearing before the Director or the employees of the Tax Office; and

(4) "Instructions" are other written statements or directives of the Director not dealing with the merits of any tax liability but otherwise in aid of the accomplishment of the duties of the Director.

C. To be effective a regulation issued by the Director shall first be submitted for public inspection by publication, posting or distribution to interested persons and who shall be invited to comment. After the proposed regulation has been subject to public comment for not less than two (2) weeks, the Director may issue it as a final regulation.

D. All final rulings and regulations of the Director shall be compiled and be subject to public inspection and reference at the Zuni Taxation and Revenue Office. The Tax Office shall use its best efforts to develop and maintain a file of names and addresses of individuals and business associations having an interest in the promulgation of new, revised or proposed regulations and shall at convenient times distribute to these persons all regulations and rulings pertinent to them.

E. The Director shall state the extent to which the regulations, rulings or orders will have retroactive effect; if no such statement is made, regulations will be applied prospectively only.

F. All orders, rulings, rules and regulations, which have been filed in the records of the Zuni Taxation and Revenue Office, shall be continued in full force and effect until repealed, replaced, superseded or amended by the Director or the Zuni Tribal Council.

§16-3-2.4. Accountability of the Zuni Taxation and Revenue Office.

The Zuni Taxation and Revenue Office, as an agency of the Zuni Tribe shall enforce provisions of this Code and any other subsequent ordinances enacted and incorporated into this Code by the Zuni Tribe as the administrative procedures provide for in this Code and through judicial enforcement in the Zuni Tribal Court or such other courts having jurisdiction as are deemed necessary to utilize. The Director shall make annual reports, including any recommended changes in fees or tax rates to the monthly on all tax monies collected by the Zuni Tribe. Monies shall be collected and deposited in accordance with Sec.16-4-2.6 of this Code.

§16-3-2.5. Duties of the Zuni Taxation and Revenue Office.

The Zuni Taxation and Revenue Office, under the supervision and control of the Director, shall be responsible for carrying out all administrative duties of assessment and collection of the taxes provided for herein and shall be responsible for maintaining all records and books of account that will permit the accurate recording of all tax remittances submitted to the Director pursuant to the provisions of this Tax Code.

§16-3-2.6. Receipts, Disbursements

A. All money received by the Zuni Taxation and Revenue Office shall be deposited with the Finance Department of the Zuni Tribe before the close of the next succeeding business day after receipt of the money and disbursements of such funds collected shall be made in accordance with this Section.

(1) Disbursements: Disbursements for tax credits, rebates, refunds, the payment of interest, distributions and transfers shall be made by the Finance Department upon request and certification of their appropriateness by the Director.

(2) Accounting: The Finance Department shall establish in its accounting system accounts for revenues collected under each chapter of this Tax Code and shall establish a suspense fund for payment of disbursements upon authorization by the Director.

(3) Separate Fund for Protested Payments: The Finance Department shall create a separate interest bearing account for tax remittances paid under protest by taxpayers, contesting their tax liability for the amount of taxes due under the provisions of this Code.

§16-3-2.7. Confidentiality Required.

A. Information about a specific property or property owner shall be considered confidential. Confidentiality extends to information gained by an employee or an official of the Pueblo of Zuni as a result of any report or information furnished the Zuni Tax Office by a taxpayer or as a result of an examination of property or records of a taxpayer.

B. Information contained in the valuation records and the identity of the owner or person in possession of the property may be released:

(1) To an authorized representative of the State of New Mexico, another state or another Indian taxing jurisdiction, providing that the receiving jurisdiction has agreed in writing to use the information for tax purposes only and agrees to share information useful to this tax program with the Pueblo of Zuni.

(2) To the Zuni Tribal Court System in an action relating to taxation in which the Pueblo is a party and in which the information is material to the inquiry.

(3) To the taxpayer or a representative authorized in writing by the owner to obtain the information, provided that the release is limited to information pertaining to the taxpayer's property.

(4) If used for statistical purposes in a way that the information revealed is not identified or identifiable as applicable to any property owner or person in possession of the property.

(5) Any person violating this section may be subject to a civil penalty of up to \$100 for each violation.

SECTION 3. Enforcement

§16-3-3.1. Records to be kept by Taxpayers.

Every person subject to taxation under this Code shall keep such records, receipts, invoices and other pertinent papers in such forms as the Director may require to determine tax liability under the provision of this Code. Every person who files tax reporting forms required under this ordinance shall keep such records for not less than four (4) years from the making of such records.

§16-3-3.2. Inspection of Business Records by the Tax Office.

A. Tax records shall at all times, during business hours, be subject to inspection by the Director, or employees or agents of the Tax Office. The Zuni Taxation and Revenue Office shall cause the records and books of account of taxpayers to be inspected or audited at such times as it deems necessary for the effective execution of its responsibilities.

B. Auditors, employees and other officials designated by the Director are authorized to request and require the production for examination of the records and books of account of the taxpayer. Those auditors or officials designated by the Director shall be furnished with credentials identifying them as such, which they shall display to any taxpayer whose books are sought for examination.

C. Every taxpayer shall, upon reasonable request, make the records and books of account available for inspection, at reasonable hours, to the Director, employees or agents of the Tax Office who properly identify themselves to the taxpayers.

§16-3-3.3. Taxpayer Returns; Payment of Taxes.

A. Every taxpayer is liable for tax at the time of the transaction or incident-giving rise to the tax until payment thereof is made.

B. Every taxpayer shall, on or before the date on which payment of any tax is due, complete and file a tax return on the form prescribed and according to regulations issued by the Director. A tax return filed under protest shall be treated as a petition for refund under the provisions of this Code.

C. Each business shall file a separate tax return. When a business owner has more than one Zuni business license, a return shall be filed for each licensed entity and activity. Jewelry, arts and crafts sales collectively shall be identified separately on each return.

§16-3-3.4. Re-Computation of Tax by Director.

If the Director is not satisfied with the accuracy of tax reporting forms submitted or with the amount of tax remitted, the Taxation and Revenue Office may compute and determine the amount required to be paid on the basis of the facts contained in the tax reporting form(s) or upon the basis of any information within its possession or that may come into its possession.

§16-3-3.5. Installment Payment Intervals.

Whenever justified by the circumstances, the Director may enter into a written agreement with any taxpayer wherein the taxpayer admits conclusive liability for the entire amount of taxes due and agrees to make monthly installment payments thereof according to the terms of the agreement but not for a period of longer than twelve (12) months. No installment agreement shall prevent the accrual of interest as otherwise provided by this Code. At the time of entering into an installment agreement, the Director shall require taxes admitted to be due according to the terms of the agreement, but if the taxpayer does not provide security, the Director shall cause notice of lien to be filed in accordance with the provisions of this Code, and when so filed it shall constitute a lien.

§16-3-3.6. Exhaustion of Administration Remedies; Judge's Decision Final.

The Tribal Court has no jurisdiction to entertain any proceeding by a taxpayer in which he calls into question his liability for any tax or the application to him of any provision of this Tax Code, except as a consequence of an appeal by him to the Tribal Court from an action or order of the Director. In the event of such an appeal, the Tribal Court shall only have power to review the action taken by the Director to determine whether such action was arbitrary, capricious or not in accordance with the Code or other applicable law. Decision by the Zuni Tribal Court shall be final.

§16-3-3.7. Procedure in Case of Failure to File Statement.

A. With respect to any of the taxes imposed by this Code, if any person shall fail, refuse or neglect to make and file a tax reporting form and tax remittance within the time prescribed that person shall be considered a delinquent taxpayer. The Director may ascertain and determine for that taxpayer as nearly as may be possible from any returns or reports filed with the Director or from any other information which the Director may be able to obtain, the total tax basis for the relevant business activity during the applicable time period immediately preceding the time period in which the tax is to be paid. The Director shall determine and fix the amount of the tax due to the Tax Office from such person for such applicable time period and shall add to the amount of such a tax penalties plus interest computed from the date the tax is due to the date of payment.

B. The Director shall mail or deliver to the person required to file a statement and to pay any tax, a letter setting forth the amount of tax, penalty, and interest due. Upon receipt of this letter the person shall remit immediately to the Tax Office the full amount of tax, penalty and interest due.

C. Failure to file a tax reporting form or remittance shall be considered an attempt or evade or defeat taxes and shall incur an additional penalty of up to \$500 for each form or payment not filed.

D. The penalties herein provided may be waived by the Director if reasonable cause for the failure and neglect to file the statement is provided in writing to and accepted by the Director.

§16-3-3.8. Power of Director to Seize and Sell and Collect From Surety Bond.

A. At any time within five days after any person is delinquent in the payment of any amount due to the Pueblo of Zuni under this Code, the Director forthwith may collect the amount in the following manner: The Director may seize any property, real or personal, of the person, not held in trust by the United States. The property, or a sufficient part of it, may be sold, as provided below, to pay the amount due together with any interest or penalties imposed for the delinquency and any costs incurred on account of the seizure and sale. The Director may collect delinquent amounts due together with penalties, interest and costs allowed directly from the surety and filed by the taxpayer as part of the Zuni Business licensing process.

B. The Director shall exercise reasonable care to preserve the value of any seized property.

§16-3-3.9. Notice of Sale.

Disposition of the property may be by public or private proceedings. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition, including the method, manner, time, place and terms must be reasonable. Reasonable notice of the time after which any private sale or other intended disposition is to be made shall be sent by the Director to the delinquent person and to any other person who has a security interest in the property and who has filed a statement indexed in the name of the delinquent person in the County where the property is located.

The proceeds of such sale shall be applied in the following order:

- (1) The reasonable expenses of taking, holding, preparing for sale and the reasonable attorneys' fees and legal expenses incurred by the Director;
- (2) The satisfaction of the indebtedness, including penalties and interest accrued;
and
- (3) If such property sold is insufficient to satisfy the debt, the Director may institute further legal proceedings or consider said amounts as a complete satisfaction of the debt. If such sale results in an excess of the amount due, said excess shall be returned to the person whose property was seized and sold.

§16-3-3.10. Hearing May be Requested; Waiver.

A hearing before the Director may be requested by the delinquent person anytime within (10) days after mailing of notice for sale. The opportunity for a hearing is deemed waived after that time has passed.

SECTION 4. Appeals: Overpayment and Refunds

§16-3-4.1. Claim of Refund.

Generally, timely payment of tax due must be made in order to claim a refund. No refund shall be allowed unless a claim therefore is filed with the Director within thirty (30) days from the date the payment was due. Every claim shall be in writing and shall state the specific grounds upon which the claim is founded. A payment of tax paid under protest with a statement of specific legal and factual grounds for the protest shall be considered a claim for refund. If a petition for refund is filed within the thirty (30) day period, and the taxpayer is not delinquent, the Director shall reconsider the determination and, if the person has so requested in his petition, shall grant that person a hearing and may decrease or increase the amount of the determination. All re-determination made by the Director are due and payable no later than thirty (30) days after the date of mailing to Taxpayer a Notice of Tax due. If they are not paid when due and payable, delinquent taxpayer penalties shall be added thereto, and enforcement can begin immediately and no refund shall be made thereafter.

§16-3-4.2. Notice of Disallowance of Claim.

Within thirty (30) days after disallowing any claim in whole or in part, service of notice of the Director's decision shall be mailed to the claimant.

§16-3-4.3. Claim for Refund.

No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund has been duly and timely filed.

§16-3-4.4. Action for Refund; Damage Claim.

A. Within thirty (30) days after the mailing of the notice the Director's action upon a claim for refund filed pursuant to this Code, a claimant may bring an action in Zuni Tribal Court against the Director on the grounds set forth in the claim for refund of the whole or any part of the amount with respect to which the claim has been disallowed. Any such action shall be limited to the amount of the refund and interest thereon if allowed by this Code. But in no event shall the Director, the Tribal Council, or the Tribe or individual members of the Tribe or the Councilor their employees or agents, be responsible for damages of any kind arising from actions taken within the scope of their duties.

B. The tribe may be liable, however for breach of the duty of care stated in Sec. 16-3-3.8 (b).

§16-3-4.5. Allowance of Interest on Refunds.

Interest will be remitted to a taxpayer on any overpayment of tax from the date the payment was received to the date a refund is made; the interest will be computed at the rate used by the Internal Revenue Service at the date refund is made, less than two percent (2%).

§16-3-4.6. Recovery of Erroneous Refunds.

The Director may recover any refund or a part thereof, which is erroneously made, and any credit or part thereof, which is erroneously allowed in an action, brought in the Zuni Tribal Court.

SECTION 5. Tax Protest Procedure

§16-3-5.0. Protest Procedure.

Certain specific procedures, available under the protest and claim for refund actions, to the Zuni Tax Office in reference to valuation and taxation are as follows:

§16-3-5.01. Time.

Any protest by a taxpayer shall be filed within thirty (30) days of the date of mailing, to him, by the Zuni Tax Office of the Notice of the Valuation and Tax Due.

§16-3-5.02. Hearing by the Tax Director.

Upon timely receipt of a protest, or a request for a hearing containing a properly stated protest, the Tax Director shall reexamine the taxpayer's report of property, the Notice of Valuation and the Tax Due and the payment of taxes for possible correction or adjustment.

§16-3-5.03. Hearing in the Tribal Court.

Upon determining that the reported property was valued properly; the Notice of Valuation and the Tax Due were issued correctly; that the taxes were paid timely; and that the protest and hearing request were properly presented, the Director shall refer the matter to the Zuni Tribal Court for hearing.

§16-3-5.04. Presiding Officer of the Court.

The Chief Judge shall assign the hearing to an officer of the Court at his discretion.

§16-3-5.05. Appearance.

Taxpayers may appear at a hearing for themselves or be represented by:

- A. A bona fide employee
- B. A Zuni Tribal member
- C. A Certified Public Accountant
- D. A Registered Public Accountant
- E. A licensed attorney, to the extent requested or permitted by the Tribal Court.

§16-3-5.06. Hearing Status.

Hearings shall not be open to the public except upon the request of the taxpayer, or by permission of the Court.

§16-3-5.07. Hearing Delays.

A. Informal hearing may be delayed subject to an agreement between the Taxpayer and the Zuni Tax Director, but for no longer than sixty (60) days.

B. Hearings before the Zuni Tribal Court may be postponed or continued at the discretion of the Court.

§16-3-5.08. Hearing Record.

The Tribal Court will see that a complete record of the hearing is made, using either a tape recording or by stenographic means.

§16-3-5.09. Hearing Procedure.

In formal protest hearings, the technical rules of evidence and the rules of civil procedures shall not apply, but the hearing shall be conducted so that each side may present evidence and argument in support of its position.

§16-3-5.10. Appeal from Tribal Court Decision.

The decision of the Tribal Court may be appealed to the Zuni Appellate Court for cause. Appeals must be taken within thirty (30) days of decision by the Tribal Court, or be forever barred.

§16-3-5.11. Pueblo Presumed Correct.

In protest proceedings before the Tribal Court, and on appeal to the Appellate Court, any assessment of taxes or demand for payment made by the Zuni Tax Office is presumed to be correct.

§16-3-5.12. Standard for Review.

The Tribal Court or the Appellate Court shall set aside a tax determination of the Zuni Tax Office only if it is found clearly and convincingly to be:

- A. arbitrary, capricious, or an abuse of discretion; or
- B. not otherwise in accordance with the laws of the Zuni Tribe or the United States of America.

§16-3-5.13. Payments After Protest Settled.

A. In the event that all or some portion of the protested value and tax due, determined by the Zuni Tax Office, is found by the Tribal Court to be due and payable by the taxpayer, that amount of the tax, and any interest that may have accrued thereon, shall be transferred over to the regular Pueblo of Zuni Tax account by the Finance Department of the Pueblo of Zuni for distribution; and

B. In the event that all or some portion of the valuation and tax due is found to be incorrect, that amount of tax and any interest that may have accrued thereon shall be paid over by the Finance Department of the Zuni Tribe at the direction of the Tribal Court at the time of the final determination of valuation and taxation.

SECTION 6. Amendment; Savings Clause; Severability

§16-3-6.1. Amendment by Tribal Council.

The provisions of this Business License and Tax Code and the provisions of any taxing ordinance governed thereby may be amended or modified at any time by action of the Tribal Council; upon recommendation of Director.

§16-3-6.2. Savings Clause; Severability of Tax Code Provisions.

If any part or parts or application of any part of this Code or the taxes levied pursuant to its provisions is held invalid, the remainder of the Code or its application to other situations or persons shall not be affected.

CHAPTER 4: RETAIL SALES TAX

SECTION 1 General Provisions and Definitions

§16-4-1.1. Purpose.

The purpose of this Chapter is to impose a tax on retail receipts and sales within the exterior boundaries of the Zuni Reservation. Said tax shall provide revenues for the provision of governmental services by the Zuni Tribal Government to all persons located or doing business within the Zuni Reservation, including taxpayers and their customers.

§16-4-1.2. Definitions.

A. "buying" or "selling" means any transfer of property for consideration or any performance of service for consideration for all transactions occurring within the exterior boundaries of the Zuni Reservation;

B. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

C. "gross receipts" means that the total amount of money or the value of other consideration received from selling property in Zuni, from leasing property employed in the Zuni Reservation, or from performing services within the Zuni Reservation. "Gross Receipts" includes any receipts from sales within Zuni Reservation of tangible personal property handled on consignment but excludes cash discounts allowed and taken, and Gross Receipts taxes imposed by this Chapter, any State or its political subdivision, payable on transactions for the reporting period. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged.

D. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks, and copyrights. Tangible personal property includes electricity, software and mobile homes.

E. "Retailer" means a person engaged in the business of making sales at retail.

F. "Retail establishment" means any premises, including a roadside stand in or from which the business of selling tangible personal property which is conducted or in or from which any retail sales are made by a retailer as that term is defined above.

G. "Retail Sale" means any sale of services or property to any person for any purpose other than those in which the purpose of the purchaser is to use or incorporate property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining.

H. "Gross receipts tax" means the tax on gross receipts imposed by this Chapter.

I. "Sale" means any transaction whereby title or possession, or both, of tangible personal property which is or is to be transferred by any means whatsoever, including rental, lease, license, or right to reproduce or use, for a consideration, by a vendor to a purchaser, or any transaction whereby services subject to tax under this Chapter are rendered for consideration or are sold to any purchaser by any vendor. Such consideration may be either in

the form of a price in money, rights, or property, or by exchange or barter, and may be payable immediately, in the future, or by installments.

J. "real property" means land, and generally whatever is built or growing on it, within the Zuni Reservation.

K. "personal property" means generally everything that is subject to ownership, which is not real property.

L. "tangible personal property" means personal property which may be owned or possessed and which occupies space and is perceptible to the senses in some way (for example, software for use in electronic communication, computation or activation).

M. "software" means the physical accumulation or fixed arrangement of a specific group of molecular impulses which is stored for retrieval, upon command, and which is capable of repetitive activation by one or more electronic signals.

SECTION 2. Retail Sales Tax

§16-4-2.1. Tax Imposed.

There is hereby imposed upon any person engaged in retail sales within the exterior boundaries of the Zuni Reservation, or otherwise subject to this Chapter, a gross receipts tax equal to 5.5% of the person's gross receipts from retail sales, unless those persons or receipts specifically are exempted by law.

§16-4-2.2. Exemptions.

Receipts of and sales to or purchases by the following shall be exempt from the tax imposed by this Chapter:

(1) The Government of the United States, the Pueblo of Zuni, or the State of New Mexico and any political subdivision or agency of such governments.

(2) Religious, charitable, social, youth, or other nonprofit entities as organized under Section 501 (c)(3) of the Internal Revenue Code that promote the public welfare.

(3) Construction contractors and subcontractors.

(4) Receipts of employees from wages, salaries commissions or any other form of remuneration for personal services.

§16-4-2.3. Deductions.

A. Sales or purchases of the following are deductible from taxable gross receipts:

(1) Livestock or agricultural products or services produced within the Zuni Reservation.

(2) Items that are paid for with federal "food stamps" or through other federal, state or tribal food programs.

(3) Rental or leases of property which extend for periods of greater than thirty (30) days.

(4) Sales of materials to manufacturers which will be used to make items which will be sold subject to the Retail Sales Tax.

(5) Sales of jewelry, arts and crafts to established businesses by Zuni manufacturers, when the items will be resold by the established business, at which time the Retail Sales Tax will be collected by the established business.

B. Gross receipts or sales taxes collected for and paid to the federal government, any Indian tribal government, State, or political subdivision are deductible from taxable gross receipts.

§16-4-2.4. Passing on of Tax.

Reimbursement for the gross receipts tax imposed on the taxpayer shall be collected by the taxpayer from the purchaser on all sales, the gross receipts of which are subject to the tax imposed by this Chapter, by adding said tax to the sale price of the goods or services purchased.

SECTION 3. Collection and Reporting

§16-4-3.1. Monthly Report and Remittance.

A. All taxes levied on established businesses are due and payable monthly on or before the twentieth (20th) day of the month after the month in which the taxes accrue. The taxpayer on or before the due date, shall complete and file with the Pueblo of Zuni a return for the preceding taxes period on a form prescribed and furnished by the Director, setting forth such information as the Director may require. The return shall be accompanied by a remittance of the amount of the tax due. The return shall be signed by the authorized agent of the Taxpayer.

B. When tax due to the Zuni Tribe amounts to over one thousand dollars (\$1000) in any reporting period, the tax remittance must be paid by either a check delivered in person to the Zuni Tax Office or by electronic transfer of funds to the Zuni Tax account on or before the date payment is due.

§16-4-3.2. Annual Reports.

No later than May 15 of each year, the taxpayer shall submit on a form provided by the Director, a report that describes the total amount of gross receipts by that business in the previous calendar year and that reconciles that figure with the taxpayer's monthly reports for that year. Said report shall be accompanied by the appropriate United States Internal Revenue Service form which show the total gross receipts by said person during the previous year (e.g. Schedule C for Sole Proprietors, Form 1065 for partnerships, etc.) If the annual report shows an underpayment for the previous year, the taxpayer shall file, along with the report, a tax remittance in the amount underpaid, plus interest and a penalty as set in this Code. If the annual reports show an overpayment, the taxpayer may apply for a refund, as provided for in Section 16-4-4.1 of this Code.

§16-4-3.3. Collection of Tax; Liens; Jeopardy Assessments; Distrain.

The taxes imposed by this Chapter and penalties and interest thereon shall be collected by the Zuni Taxation and Revenue Office. If the Director believes that the collection of any tax imposed by this Chapter will be jeopardized by delay, an agent or employee of the Tax Office shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately, assess such tax (together with all interest and penalties, the assessment of which is provided for by law.) Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Pueblo of Zuni.

§16-4-3.4. Tax a Personal Debt; Period of Limitation.

The tax imposed by this Chapter and interest and penalties thereon shall become, from the time due and payable, debt of the person liable to pay the same to the Pueblo of Zuni. An action may be brought at any time within four years from the time the tax shall be due and payable in the name of the Pueblo of Zuni to recover the amount of any taxes, penalties, and interest due under the provisions of this Chapter, but such actions shall be utterly barred after the expiration of the aforesaid four years; provided, that if it is demonstrated that the person intentionally failed to pay such tax, this limitation on actions shall not apply.

SECTION 4. Penalties

§16-4-4. Delinquent Taxpayer; Penalties; Tax Lien.

A. If the taxpayer from whom taxes are due does not make payment thereof within the time specified in the Chapter by delivering appropriate tax reporting forms accompanied by a tax remittance in the proper amount to the Zuni Taxation and Revenue Office, he becomes a delinquent taxpayer and remains such until payment of the total amount of taxes, penalty, and interest is made or until no part of the assessment remains unpaid.

B. Each delinquent taxpayer shall be assessed:

(1) A penalty of 10% per month of the amount of tax due, plus interest and collection costs accrued, for each month or part of month that payment of gross receipts or sales tax is late.

(2) Interest at an annual rate of twenty percent (20%) simple shall accrue against the amount of delinquent taxes due and it shall be computed on a daily basis from the date the tax was due until the date the taxes are paid.

(3) A taxpayer failing to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including attorney fees and other costs of collection, including but not limited to those incurred outside the jurisdiction of the reservation.

(4) These charges shall be assessed unless the Director for good cause shown in writing relieves the taxpayer from the operation of this section.

C. The tax assessed against any person under this Chapter, together with penalties and interest thereon, shall be a lien upon any and all property, real and personal, owned in fee by such person within the exterior boundaries of the Zuni Indian Reservation. The tax lien shall have precedence over any other claims, lien or demand. The lien may be enforced in the name

of the Zuni Indian Tribe and can be satisfied from the surety bond posted by the Taxpayer with the tax office or by other property belonging to Taxpayer or its surety, located within the reservation or elsewhere.

D. Persons required to have either a Class 1 and itinerant licenses are subject to immediate impoundment of property if taxes imposed by this Chapter are not paid when due.

CHAPTER 5: MOTOR VEHICLE EXCISE TAX

SECTION 1. General Provision and Definition

§16-5-1.1. Purpose.

The purpose of this Chapter is to impose a tax on the sale of motor vehicles sold within the exterior boundaries of the Zuni Reservation to enrolled members of the Zuni Tribe who are otherwise exempt from the motor vehicle excise tax, gross receipts tax, or compensating tax imposed by the State of New Mexico. Said tax shall provide revenue for the provision of governmental services, specifically road maintenance, by the Zuni Tribal Government to all persons located or doing business within the Zuni Reservation.

§16-5-1.2. Definitions.

As used in this Chapter:

- A. "motor vehicle" means every vehicle, which is self-propelled;
- B. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture or syndicate;
- C. "tax" means the motor vehicle excise tax imposed under this Chapter;
- D. "vehicle" means any device in, upon, or by which any person or property is or may be transported or driven upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks.

SECTION 2. Motor Vehicle Excise Tax.

§16-5-2.1. Tax Imposed.

There is hereby imposed upon any person engaged in the retail sale of motor vehicles within the exterior boundaries of the Zuni Reservation, or otherwise subject to this Chapter, a motor vehicle excise tax equal to two percent of the price paid for the motor vehicle.

§16-5-2.2. Exemption from Tax.

Sales to or purchases by the following shall be exempt from the tax imposed by this Chapter;

- A. Any person who is not an enrolled member of the Zuni Tribe and is otherwise subject to the motor vehicle excise tax of the State of New Mexico or any other state.

B. The Pueblo of Zuni, the Government of the United States, or the State of New Mexico or any political subdivision or agency of such government.

C. Religious, charitable, social, youth, or other non-profit entities that promote the public welfare as organized under section 501 (c) (3) of the Internal Revenue Code.

§16-5-2.3. Passing on of Tax.

Reimbursement for the motor vehicle excise tax imposed on the taxpayer shall be collected by the taxpayer from the purchaser of the motor vehicle, by adding said tax to the sale price of the motor vehicle purchased.

SECTION 3. Collection and Reporting

§16-5-3.1. Monthly Report Remittance.

A. All taxes levied on persons engaged in the retail sale of motor vehicles are due and payable monthly on or before the 20th day of the month after the month in which the taxes accrue. The taxpayer on or before the due date, shall complete and file with the Pueblo of Zuni a return for the preceding tax period on a form prescribed and furnished by the Director, setting forth such information as the Director may require. The return shall be accompanied by a remittance of the amount of the tax due. Returns shall be signed by the authorized agent of the taxpayer.

B. When tax due to the Zuni Tribe amounts to over \$1,000.00 in any reporting period, the tax period remittance must be paid by either a check delivered in person to the Zuni Tax Office or by electronic transfer of funds to the Zuni tax account on or before the date payment is due

§16-5-3.2. Annual Reports.

No later than May 15 of each year, the taxpayer shall submit on a form provided by the Director, a report that describes the total dollar amount of gross motor vehicle sales by that person in the previous calendar year and that reconciles that figure with the taxpayer's monthly reports for that year. Said report shall be accompanied by the appropriate United States Internal Revenue Service form which shows the total gross receipts from motor vehicle sales by said person during the previous year. If the annual report shows an underpayment for the previous year, the taxpayer shall file, along with the report, a tax remittance in the amount underpaid, plus interest and a penalty as set in this Code. If the annual reports show an overpayment, the taxpayer may apply for a refund, as provided for in Section 163-4.1 of this Code.

§16-5-3.3. Refunds; Protest; Procedures.

A. If any person believes that he has made payment of any motor vehicle excise tax in excess of that which he is liable, that person may claim a refund by filing with the Director a claim for refund in accordance with the provisions of Section 16-3-4 of this Code.

B. Any person whose claim for refund is denied in whole or in part may protest the denial in accordance with the provisions of Section 16-3-5 of this Code.

§16-5-3.4. Tax a Personal Debt; Period of Limitation.

The tax imposed by this Chapter and interest and penalties thereon shall become, from the time due and payable, the debt of the person liable to pay the same to the Pueblo of Zuni. Any action may be brought at any time within four (4) years from the time the tax shall be due and payable in the name of the Pueblo of Zuni to recover the amount of any taxes, penalties, and interest due under the provisions of this Chapter, but such actions shall be barred after the expiration of the aforesaid four (4) years; pro-vided, that if it is demonstrated that the person intentionally failed to pay such taxes, this limitation on actions shall not apply.

SECTION 4. Penalties

§16-5-4.1. Delinquent Taxpayer; Penalties; Tax Lien.

A. If the taxpayer from whom taxes are due does not make payment thereof within the time specified in this Chapter by delivering appropriate tax reporting forms accompanied by a tax remittance in the proper amount to the Zuni Taxation and Revenue Office, he becomes a delinquent taxpayer and remains such until payment of the total amount of taxes, penalty, and interest is made or until no part of the assessment remains unpaid.

B. Each delinquent taxpayer shall be assessed:

(1) A penalty of ten percent (10%) per month on the amount of tax due, plus interest and collection costs accrued, for each month or part of month that payment of motor vehicle excise tax is late.

(2) Interest at an annual rate of twenty percent (20%) simple shall accrue against the amount of delinquent taxes due and it shall be computed on a daily basis from the date the tax was due until the date the taxes are paid.

(3) A taxpayer failing to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including attorneys' fees and other costs of collection, including, but not limited to, those incurred outside the jurisdiction of the reservation.

(4) These charges shall be assessed unless the Director for good cause shown in writing relieves the taxpayer from the operation of this section.

(c) The tax assessed against any person under this Chapter, together with penalties and interest thereon, shall be a lien upon any and all property, real and personal, owned in fee by such person within the exterior boundaries of the Zuni Indian Reservation and the tax lien shall have precedence over any other claims, lien or demand. The lien may be enforced in the name of the Zuni Indian Tribe and can be enforced from the surety bond posted by the Taxpayer with the tax office or by other property belonging to the Taxpayer or its surety, located within the reservation or elsewhere.

CHAPTER 6: ZUNI PANHANDLING

§16-6-1. Zuni Panhandling Ordinance. [Revised February 12, 2020, Resolution No. M70-2020-P023]

Policy And Purpose: It has been determined by the Zuni Tribe that unregulated panhandling, loitering and peddling has become detrimental to the community and has

contributed to the loss of access to and enjoyment of public and private places, to a sense of insecurity, intimidation and disorder for community members and visitors, and has negatively affected tourism and other economic opportunities for local artists.

Scope: This ordinance shall include the following provisions:

- a. Time, place, and manner of panhandling.
- b. Restrictions on loitering.
- c. Permit requirement for peddling.

A. Definitions:

(1) "Panhandling," for the purpose of this Ordinance, is any solicitation made in person requesting an immediate donation of money. Purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, is a donation for the purpose of this chapter. Panhandling does not include passively standing or sitting with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific person other than in response to an inquiry by that person.

(2) "Loitering," for the purpose of this Ordinance, includes standing around, moving slowly about, or lingering or lagging behind.

(3) "Peddler," for the purpose of this Ordinance, is any person who sells or offers for commercial sale any item, goods or services within the boundaries of the Zuni Reservation outside of licensed established business premises. "Peddling," for the purpose of this Ordinance is selling or offering for commercial sale any item, goods or services within the boundaries of the Zuni Reservation outside of licensed established business premises.

(4) "Aggressive manner," for the purpose of this Ordinance, means and includes:

(a) Intentionally or recklessly making any physical contact with or touching another person in the course of panhandling or peddling without the person's consent;

(b) Following a person being while panhandling or peddling, if that conduct is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively;

(c) Continuing to engage in panhandling or peddling within five feet of a person after the person has made a negative response, if continuing is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively;

(d) For the purpose of panhandling or peddling, intentionally or recklessly blocking the safe or free passage of a person or requiring a person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person panhandling or peddling. For purposes of this Ordinance, acts authorized as an exercise of one's constitutional right to picket or legally protest shall not be considered obstruction of pedestrian or vehicular traffic;

(e) Intentionally or recklessly using obscene or abusive language or gestures intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or using words intended to or reasonably likely to intimidate a person into responding affirmatively;

(f) While panhandling or peddling, speaking in a volume unreasonably loud under the circumstances; or

(g) For the purpose of panhandling or peddling, approaching the person being solicited in a manner that is intended to or is likely to cause a reasonable person to fear imminent harm or the commission of a criminal act upon property in the person's possession; or is intended to or is reasonably likely to intimidate a person into responding affirmatively; or

(h) Panhandling or peddling in a group of two or more persons in a manner that is intended to or is reasonably likely to intimidate a person into responding affirmatively.

(5) "False or misleading representations," for the purpose of this Ordinance, include, but are not limited to, the following:

(a) Any false or misleading representation intentionally or recklessly made in connection with panhandling or peddling activity;

(b) Stating that a donation is needed to meet a specific need, when the solicitor already has sufficient funds to meet that need and does not disclose that fact;

(c) Stating that a donation is needed to meet a need which does not exist;

(d) Stating that the solicitor is from out of town and stranded, when that is not true;

(e) Wearing a military uniform or other indication of military service, when the solicitor is neither a present nor former member of the service indicated;

(f) Wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated;

(g) Use of any makeup or device to simulate any deformity; or

(h) Stating that the solicitor is homeless, when he is not.

(6) A "Peddler's Permit requirement violation," for the purpose of this Ordinance, includes the following:

(a) Peddling without a current peddler's permit issued and approved by the Pueblo of Zuni Taxation and Revenue Department and publicly displayed as an ID badge;

(b) Peddling on private property or at established business premises of another without the express permission of the owner or person with authority over the property or business premises;

(c) Peddling on public property at such a time or in such a manner as to disrupt or interfere with the normal course of business at that location;

(d) Peddling while under the influence of intoxicating liquor or drugs;

or

(e) Peddling in violation of the terms and conditions of a Pueblo of Zuni Taxation and Revenue Department Peddler's Permit or in violation of the Vendor Agreement to Sell on the Zuni Visitor and Arts Center premises.

B. Time of Panhandling. Any person who panhandles a half hour after sunset or a half hour before sunrise in locations without sufficient artificial light to allow a person with normal vision to clearly identify facial features, observe any items held in hands, and observe physical gestures at distances of 25 feet or less is guilty of a Class C Offense.

C. Place of Panhandling. Any person who panhandles when the person solicited is in any of the following places is guilty of a Class C Offense:

- (1) At any bus or public transportation stop;
- (2) In any public transportation vehicle or facility;
- (3) In any vehicle on the street; or
- (4) On private property, unless the panhandler has permission from the owner or occupant.

D. Manner of Panhandling. Any person engaged in panhandling in an aggressive manner is guilty of a Class C Offense.

E. False or Misleading Solicitation. Any person who knowingly makes any false or misleading representation in the course of panhandling or peddling is guilty of a Class C Offense.

F. Loitering.

- (1) A person found guilty of loitering is guilty of a Class C Offense.
- (2) It shall be unlawful for any person or group of persons:
 - (a) To loiter on the streets, sidewalks, crosswalks, walks in public parks or any other public area so as to obstruct, impede or interfere with the use of the street, sidewalk, crosswalk, walk in a public park or other area by any other person;
 - (b) To loiter on the grounds or within any public building within the boundaries of the Zuni Reservation so as in any way to obstruct, impede, interfere with, or interrupt the operation of any activities within such public building or unreasonably obstruct the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; or
 - (c) To loiter on private property within the boundaries of the Zuni Reservation if ordered to leave the private property by the owner, his agent, a tenant or lawful occupant thereof, or if said private property is posted with a sign or signs stating that loitering thereon is prohibited.

G. Peddler's Permit Requirement. A person found guilty of a Peddler's Permit requirement violation is guilty of a Class C Offense.

H. Severability. Severability is intended throughout and within the provisions of this Ordinance. If any section, sentence, clause or phrase of this Ordinance is held invalid or unconstitutional by a court of competent jurisdiction, then such judgment shall in no way affect or impair the validity of the remaining portions of this Ordinance.

I. Intent. This Ordinance is not intended to proscribe any demand for payment for services rendered or goods delivered, nor to prohibit constitutionally protected speech, lawful picketing, demonstrations, or conduct.

(Annotations: Enacted by Zuni Tribal Council Resolution No. M70-2020-P023 on February 12, 2020, and approved by the BIA on February 22, 2021.)

END OF TITLE XVI. ZUNI BUSINESS LICENSE AND TAX CODE

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TITLE XVII. PUEBLO OF ZUNI RANGE CODE [March 7, 2005, Resolution No. M70-2005-Q015]

SECTION 1: PURPOSE.

This Zuni Range Code will govern the allocation and use of Tribal rangelands, held in trust by the United States, on the Zuni Reservation and shall become effective upon approval of the Zuni Tribal Council and the Governor. It is the purpose of this Range Code to help the Zuni people in achieving the following objectives:

1.A. To conserve, through proper grazing management, the land, forage, forest, water, wildlife, soil, watershed, and recreation resources on the Zuni Reservation and the improvement of these resources where they have deteriorated.

1.B. To protect the interest and rights of the Zuni people from trespass grazing or introduction of livestock without an authorized permit.

1.C. When idle or new grazing lands become available, the Tribe will provide a fair distribution of tribal grazing lands to the maximum number of tribal members who may desire the full benefits.

1.D. To provide the administration of grazing privileges in a fair manner which will yield the highest return to Zuni grazing permittees consistent with sustained yield management principles and the fulfillment of the rights and objectives of the Zuni tribal governing bodies and individual land users.

SECTION 2: DEFINITIONS.

The following definitions shall be used throughout this Range Code:

AU - An animal unit is one mature (1000 pound) cow or the equivalent based on a daily forage consumption of 26 pounds of dry feed. Any livestock six months and older of age will be counted as an AU.

AUM - An animal unit month (AUM) of grazing is one cow grazing for one month or equivalent to five sheep grazing for one month. Horses will be computed at 1-1/2 AUM.

Bureau of Indian Affairs - A Federal bureau under the Department of the Interior that assists the Native Americans with their Tribal Lands that are held in Trust.

Carrying Capacity - The maximum number of animals which can graze on a given area of range, for a specific number of days, without inducing a downward trend in forage production, forage quality, or soil.

Conservation Plan - A written document that describes a certain range unit's natural resources component, livestock component, and wildlife component and how these components will be managed together to produce the goals for the land user and the natural resources managers in a sustainable manner.

Grazing Bill- A written document that describes the payment of the grazing rental fees.

Grazing Permit - is a revocable privilege granted in writing to enter on and utilize Zuni tribal forage resources by domestic livestock on a specified area/unit. The purpose of the grazing permit is to regulate grazing of all livestock in conformance with a comprehensive range

management program. The permit consists of a written agreement between the Zuni Tribal Council and an individual or livestock association stating the season of use, map of the area grazed, class of livestock, and the number of livestock expressed as animal unit months that may be grazed.

Grazing Rental Fees - The annual fee that is charged from the total of the grazing rental rate multiplied by the number of AUMs that the permittee will graze authorized in the permit.
Example:

Cow, Burro, and Donkey - Grazing rental rate per month (\$/ADM) x number of months grazing x number of cows, burros, and donkey = Annual Grazing Rental Fee for cow, burro, and donkey.

Sheep and Goats- Grazing rental rate per month (\$/AUM) x number of months x number of sheep and goats divided by 5 (5 sheep = 1 cow) = Annual Grazing Rental Fee for sheep and goats.

Horses - Grazing rental rate per month (\$/AUM) x number of months grazing x number of horses x 1.5 (1 horse = 1.5 cows) = Annual Grazing Rental Fee for horses.

Grazing Rental Rate - The amount you must pay for an AUM.

Grazing Use Statement - A written document that describes how many AUMs the permittee will be allowed to graze on his range unit based on the permitted carrying capacity for the coming grazing season.

Immediate Heirs (Family) - The spouse, brothers, sisters, lineal ancestors, lineal descendants of the deceased permittee.

Law Enforcement Officer - An officer hired by the Zuni Police Department that enforces laws within the exterior boundaries of the Zuni Reservation.

Legal Appointed Guardian - A person who has the care of a person by order of the courts, usually a minor or by Power of Attorney for an elderly permittee.

Livestock - Domestic animals.

Livestock Committee - An organization that handles all livestock matters.

Minor - An individual who is less than 18 years of age.

Modification - The making of a limited change in a written grazing document.

Non-use - A range unit that is not grazed.

Notification of Trespass - A written document that outlines the facts and procedures for correcting the alleged trespass.

Nutria Cattle Association - An organization of Zuni cattlemen that graze their livestock together in a specified range unit.

Permanently Affixed Range Improvements - Range improvements that are permanently attached to the land.

Permittee - A person or a group that has a permit for grazing.

Privileges - A granted use to utilize Zuni Trust lands for grazing.

Pueblo of Zuni - Refers to the Zuni Tribe.

Quorum - The number of officers or members of a body that when duly assembled is legally competent to conduct business.

Range Improvement Fund - Monies that are set aside to be used for improvements on the range units.

Range Improvement Permit - A written document that authorizes construction of improvements on a range unit.

Rangeland - Land on which native vegetation is predominantly grasses, grass-like plants, half shrubs or shrubs suitable for grazing.

Range Unit - Rangeland identified for the management and administration of grazing.

Relinquish - To give up completely.

Revocable --:- Capable of being taken back.

Sublet - To lease or rent all or part of a lease or permit from the original lessee or permittee. This is not allowed under this Code.

Trespass - Any unauthorized occupancy, use of, or action on rangeland.

Tribal Land - Any tract of land in which any interest in the surface estate is owned by the Tribe.

Tribal Ranger - An officer hired by the Game and Fish Department that enforces laws primarily on the non-residential areas of the Reservation.

Trust Land - Any tract, or interest therein, that the United States holds in trust status for the benefit of the Tribe or individual Native American.

Utilization Studies - Monitoring studies that measure how much of the vegetation is being used by grazing animals.

Veterinarian Health Certificate - A written document used for shipping livestock that is issued by an accredited veterinarian that states that the livestock have no contagious diseases and are in good health.

Water Developments - Range improvements that deals with water, such as wells, windmills, springs, pipelines, troughs, storage tanks, dirt tanks, and catchments.

Written Notice - A written document mailed by way of United States mail, certified return receipt requested, postage prepaid, or hand delivered.

Zuni Cattle Association - An organization of Zuni cattlemen that graze their livestock together in a specified range unit.

Zuni Division of Natural Resources - A Tribal Division of the Pueblo of Zuni that works on the natural resources components on the Zuni Indian Reservation.

Zuni Independent Livestock Association - An organization that consists of individual livestock producers that are not part of the Zuni Cattle Association or Nutria Cattle Association.

Zuni Non-Permitted Livestock Owner - Zuni livestock owner that owns livestock but does not have a grazing permit.

Zuni Sheep Association - An organization of Zuni sheep owners that graze on individual range units.

SECTION 3: ZUNI LIVESTOCK COMMITTEE.

3.A. The administration of the Zuni Range Code will be the joint responsibility of the Zuni Livestock Committee and the Director of the Zuni Division of Natural Resources (or his/her designee).

3.B. The Zuni Livestock Committee will be comprised of one member and one alternate from the Zuni Cattle Association, Nutria Cattle Association, Zuni Community (non-livestock owner), Zuni Independent Livestock Association, and two members and two alternates from the Zuni Sheep Association.

3.C. Any person who is a member of the Zuni Tribal Council or Governor will not serve as a member of the Zuni Livestock Committee.

3.D. The Governor and Tribal Council needs to concur with the selections of the Zuni Livestock Committee's members and alternates.

3.E. A Zuni Game and Fish Ranger will be present at each Zuni Livestock Committee meeting.

3.F. A quorum consists of one representative present from the Zuni Cattle Association, Nutria Cattle Association, Zuni Community (non-livestock owner), Zuni Independent Livestock Association, and two representatives from the Zuni Sheep Association. A measure passes with a two-thirds majority vote of four or greater.

3.G. Appeals of the Committee's written decisions will be made to the Governor and Tribal Council within 30 calendar days of the Committee's written decision. The decision of the Tribal Council and Governor shall be final.

3.H. Minutes of Livestock Committee dispute meetings will be recorded and maintained as public record by the secretary of the Livestock Committee and copies will be disseminated to the Zuni Tribal Council, Bureau of Indian Affairs, and Director of Zuni Division of Natural Resources within 15 calendar days.

SECTION 4: AMENDMENT.

The Zuni Range Code may be amended by the Zuni Tribal Council, upon recommendation of the Zuni Livestock Committee and concurrence by the Governor.

SECTION 5: GRAZING PERMITS.

5.A. **Definition:** A Grazing Permit, as used in the Zuni Range Code, is a revocable privilege granted in writing to enter on and utilize Zuni tribal forage resources by domestic livestock on a specified area/unit. The purpose of the grazing permit is to regulate grazing of all livestock in conformance with a comprehensive range management program. The permit consists of a written agreement between the Zuni Tribal Council and an individual or livestock association stating the season of use, map of the area grazed, class of livestock, brand, and the number of livestock expressed as animal unit months that may be grazed.

5.B. **Scope:** No livestock will be allowed to graze on the Zuni Indian Reservation rangelands except by authority of a grazing permit issued in accordance with the provisions of this Code.

5.C. **Carrying Capacity:** Livestock grazing permitted on the Zuni Indian Reservation rangelands will not exceed the carrying capacity of the range or the ability of the land to provide habitat for wildlife and conserve the health of the watershed. The carrying capacity as established by the Bureau of Indian Affairs and the Zuni Division of Natural Resources personnel will be based on the best information available through two years utilization studies and a range condition analysis of the range unit. An animal unit month (AUM) of grazing is one cow grazing for one month or equivalent to five sheep grazing for one month. Horses will be computed at 1-1/2 AUM. Any livestock less than six months of age will not be counted.

5.D. **Issuance of Grazing Permits:** In order for a grazing permit to be issued, the following conditions need to be met:

- (1) Applicant must own livestock within 30 calendar days of issuance of grazing permit or as stipulated in the conservation plan.
- (2) Applicant must be an enrolled member of the Zuni Tribe.
- (3) Applicant must be 18 years of age or older.
- (4) Applicant will agree to accept and abide by the Range Code.
- (5) The applicant must participate with the Bureau of Indian Affairs, Zuni Division of Natural Resources, and Zuni Livestock Committee in the preparation of a conservation plan. The applicant must agree and sign-the conservation plan.
- (6) Upon approval, new grazing permits will be issued by the Pueblo of Zuni, to individuals making proper application and with the recommendation of the Zuni Livestock Committee and final approval of the Tribal Council, Governor, and the Bureau of Indian Affairs.
- (7) Names of potential applicants for a grazing permit will be placed on a waiting list, maintained by the Zuni Livestock Committee, for any vacant range unit. As range units become available the first name on the list will be considered for the vacant range unit.
- (8) All livestock grazed by the permittee will bear his/her current identifiable state-registered brands to show ownership.
- (9) In the case of more than one cattle grazer on a permit, ownership of the livestock will be stipulated on the permit with all the brands identified and the number of

livestock per brand specified. On grazing permits with sheep only, ear marks will be used to distinguish ownership on the permit.

5.E. Unit Transference: The grazing permit shall be tied to a specific range unit and is not transferable from range unit to range unit.

5.F. Permit Renewal: Grazing permits will be renewed by the Office of the Governor, Pueblo of Zuni, to individuals making proper application at the Bureau of Indian Affairs, Zuni Agency Office, and with the recommendation of the Zuni Livestock Committee and final approval of the Tribal Council, Governor, and the Bureau of Indian Affairs.

5.G. Permit Tenure: All active regular grazing permits shall be for five years.

5.R. Permit Transfer: Grazing permits will not be exchanged or sublet. The permit may be transferred to another eligible enrolled tribal member by proper application and with the recommendation of the Zuni Livestock Committee and final approval of the Tribal Council, Governor, and Bureau of Indian Affairs. The transfer of the grazing permit needs to be initiated within 30 calendar days of the date that the potential permittee change occurs.

5.I. Permit Modification:

(1) A permittee may request modification of their grazing permit and associated conservation plan by submitting a written request to the Zuni Livestock Committee. Such request for modification shall be for the purpose of:

- (a) An increase or decrease in the number of livestock permitted.
- (b) Change in season of use.
- (c) Change in the class of livestock grazed.
- (d) Range improvements.

(2) Tribal and Bureau of Indian Affairs Programs may request a modification of a grazing permit and associated conservation plan. The modification of a grazing permit must be recommended by the Zuni Livestock Committee, and approved by Tribal Council, Governor, and Bureau of Indian Affairs. The permittee where the modification occurs will be notified within 30 calendar days of the modification decision.

5.J. Cancellation: A grazing permit or a portion of the grazing permit may be canceled by the Tribal Council and Governor with a 30 calendar day written notice upon the approval of the Tribal Council, and Governor, and Bureau of Indian Affairs for the following reasons:

(1) The permittee failed to correct the condition leading to a conviction of trespass pursuant to Section 9 and Section 10.

(2) A grazing permit may be modified or a part of the permit modified on 30 calendar days written notice by the Bureau of Indian Affairs, because of termination of trust status of permitted land. In case of modification because of trust termination, the action shall be affected when the trust status expires

(3) The permittee has taken total non-use for two years without approval.

(4) The Zuni Tribal Council has withdrawn the rangeland from grazing for commercial development, residential development, economic development, public works, protection of wildlife, threatened & endangered species, or natural resource areas. If a permittee has his entire assigned range unit withdrawn from grazing because of a reason under 5.J.(4), this permittee's name will be placed at the top of the waiting list of individuals wanting a range unit.

(5) For non-compliance with the approved conservation plan, including maintenance of fences.

(6) For non-payment of grazing rental fees and water use fees. Fees must be paid within 90 calendar days of issuance.

(7) For non-payment of trespass fees, fines or penalties assessed for trespass together with the reasonable value of the forage consumed by their livestock, damages to property injured or destroyed, or for expenses incurred in the impoundment, disposal, and administration of said trespass. The permittee may appeal the decision to cancel all or part of his permit under Section 5.J to the Tribal Council within 30 calendar days from the receipt of the written decision.

5.K. Permit Inheritance: Upon the death of a permittee, the immediate heirs of the deceased permittee will be given 60 calendar days, from the date of the permittee's death, to notify and make application at the Bureau of Indian Affairs Natural Resources Office for transfer of grazing privileges and will be granted priority upon their application. If the heirs are minors, then application may be made in their behalf by a parent or legally appointed guardian or trustee. If the heirs fail to notify and make application for transfer of grazing privileges within the 60 calendar days, the permit will be cancelled.

SECTION 6: ALLOCATION OF GRAZING PRIVILEGES.

6.A. A person desiring a range unit will make written application to the Zuni Livestock Committee.

6.B. If a permittee wishes to be assigned to a vacant range unit, he must make application according to the provisions of this Code to the Zuni Livestock Committee, and if successful, will relinquish his old permit and all privileges and uses associated with that permit and accept the new range unit.

6.C. The Zuni Livestock Committee will schedule a date when a new applicant shall appear before the Committee for a hearing on his application. The names of those who have made applications shall be made public by posting in the Tribal Building and other public buildings, for a period of 15 calendar days prior to the date set for the hearing, by the Zuni Livestock Committee.

6.D. The Zuni Livestock Committee shall investigate each new application to determine the applicant's eligibility and whether or not a permit will be recommended for issuance. In the event of a negative decision by the Zuni Livestock Committee, the applicant may appeal to the Tribal Council within 30 calendar days from the receipt of the written decision for a rehearing on his application. The decision of the Tribal Council shall be final.

SECTION 7: GRAZING RENTAL FEES.

7.A. All Zuni tribal members using Zuni Reservation rangelands will be required to pay grazing rental fees.

7.B. Permittees will be assessed a grazing rental fee on an annual basis in advance. The grazing rental fee payment will be due on November 1st with a grace period of 30 calendar days before a late fee will be assessed. The grazing rental fee is based on the total number of Animal Unit Months (AUMs) and the period of use that will be grazed on the range unit not to exceed the carrying capacity of the grazing permit.

7.C. A grazing use statement will be sent out by September 1st and the permittee will state how many head of livestock (AUMs) and the period of use that will be grazed on their range unit for the coming grazing season.

7.D. Every year by September 15th, the Governor will determine the grazing rental rate with the recommendation of the Livestock Committee and the approval of the Tribal Council.

7.E. A grazing bill will be sent out by October 1st to the permittee based on the period of use and number of AUMs that will be grazed on their range unit for the coming grazing season.

7.F. A grazing rental fee adjustment will be made only with the recommendation of the Zuni Livestock Committee and the approval of the Tribal Council and Governor. The adjustment will be made in the next grazing bill period. Documentation from a Law Enforcement Officer of livestock loss will be required for grazing rental fee adjustment.

7.G. In the event of a vacant range unit assignment, the grazing rental fee will be paid before the livestock are placed on the range unit.

7.H. Grazing rental fees will be collected and administered by the Zuni Finance Department and deposited in the Range Improvement Fund.

SECTION 8: ENFORCEMENT.

The Zuni Tribal Rangers will be responsible for all Native American enforcement actions pertaining to the Zuni Range Code. They will be assisted by all Zuni Law Enforcement Officers.

8.A. Violations by non-Native Americans will be enforced by Zuni Tribal Rangers under Subpart I, Part 166, 25 Code of Federal Regulations. They will be assisted by all Zuni Law Enforcement Officers.

SECTION 9: TRESPASS.

9.A. The following acts shall be considered as trespass on the Zuni Reservation:

(1) Any person introducing or grazing livestock on rangelands without an authorized permit.

(2) Any person who transfers, through the transfer process, an entire permit and does not remove his/her livestock from the permitted range unit within five calendar days.

(3) Any person who refuses to brand or mark livestock or makes false reports of livestock owned. All livestock shall bear a New Mexico state registered brand to prove ownership.

3a. All adult livestock will be branded within 30 calendar days of being placed on the rangelands.

3b. All adult livestock will be branded by six months of age.

(4) Any person who allows their livestock to drift from beyond his/her permitted range unit.

(5) Any person grazing livestock who does not comply with the authorized grazing permit and associated conservation plan within five calendar days of notification.

(6) All range units with cattle or horses must be fenced before the livestock are placed on the range unit and the fences must be maintained for the duration of the grazing permit period.

(7) Any person grazing livestock without paying their grazing rental fees is in trespass, as stipulated in Section 7B.

(8) Any person bringing livestock on the Zuni Reservation without a Veterinarian Health Certificate, bill of sale or proof of ownership, and have not been inspected by a Zuni Tribal Ranger.

(9) Range improvements that are not permitted under a Range Improvement Permit.

9.B. Upon receipt of Notification of Trespass by a Zuni Law Enforcement Officer, the owner of the trespass livestock shall be given a period not to exceed five calendar days to correct the trespass condition. Copies of the Notification of Trespass shall be provided to the Zuni Livestock Committee and the Bureau of Indian Affairs, Zuni Agency.

9.C. Should the Native American owner, or the person in charge of any Native American- owned livestock alleged to be in trespass, as provided in Section 9, fail to comply with the terms of the Tribal Rangers' Notification of Trespass, said person shall be subject to action by the Zuni Tribal Court.

9.D. Trespass by non-Native Americans will be handled by the Tribal Rangers under Subpart I, Part 166,25 Code of Federal Regulations.

SECTION 10: PENALTY.

10.A. Any tribal owner of livestock grazing in trespass on Zuni tribal ranges as defined in this Range Code shall be subject to action by the Zuni Tribal Court of a violation under Section 9. Violators shall be assessed a fine not to exceed \$100.00 and/or shall be confined in jail for a period not to exceed 45 calendar days. In addition, the violator shall be required to pay a penalty of \$1.00 per head per day of trespass in addition to the reasonable value of the forage consumed by their livestock, damages to property injured or destroyed, and for expenses incurred in impoundment, disposal, and administration of said trespass. After five calendar days from the trespass notification, the trespass livestock are subject to impoundment by the Tribal Rangers. Any criminal actions need to be investigated by the Zuni Tribal Police Criminal Investigator

and/or the Federal Bureau of Investigation. The criminal actions will be heard by the Tribal Courts and can be appealed to the Appellant Court.

10.B. Any Zuni tribal member who allows non-Zunis to graze livestock will be subject to the trespass provisions in Section 10.A.

10.C. This Range Code and Tribal Resolution shall supersede all previous codes and resolutions.

10.D. The Zuni Livestock Committee will recommend to the Tribal Council the cancellation of the grazing permit of any person who, after conviction under Section 9.A., fails to correct the condition.

10.E. If any person is convicted by the Zuni Tribal Courts of grazing livestock in trespass, the Tribal Rangers will coordinate the roundup and sale of excess livestock. The proceeds of such sale will be paid to the owner after the deduction of paying a penalty of \$1.00 per head per day of trespass in addition to the reasonable value of the forage consumed by their livestock, damages to property injured or destroyed, and for expenses incurred in roundup, impoundment, disposal, and administration of said trespass.

10.F. Any Native American vandalizing any part of a range unit will be prosecuted in Zuni Tribal Court.

SECTION 11: RANGE IMPROVEMENTS.

11.A. A Range Improvement Permit is needed before any range improvement can be constructed and/or removed from any range unit. The Range Improvement Permit is issued by the Pueblo of Zuni, with the recommendation from the Zuni Livestock Committee, and approved by the Tribal Council, Governor, and Bureau of Indian Affairs.

11.B. Range improvements will include all water developments, fences, range rehabilitations, buildings to support livestock operations, livestock camps, and permanent corrals.

11.C. Fencing and cross fencing will be allowed only on established range units where a conservation plan has been approved under the applicable section of this Range Code. Farm plots may be fenced only along the existing fence line and may not be enlarged without Tribal Council permission.

11.D. In the event of termination, modification, relinquishment or cancellation of a grazing permit, the permanently affixed range improvements become the property of the Zuni Tribe.

11.E. If the permittee fails to dispose of the range improvements that are not permanently affixed within 60 calendar days, the range improvements shall be deemed the property of the Zuni Tribe.

SECTION 12: RANGE CONTROL STIPULATION.

The following range control stipulations are hereby prescribed for use in all range lands:

12.A. The permittee shall fully comply with Title 19 - Zuni Waste Disposal Code.

12.B. Animal Health Regulations - All livestock on all Zuni Tribal lands are subject to the animal health laws and regulations now in force and hereafter established by the United States, State of New Mexico, or Pueblo of Zuni and the permittee will abide by such laws and regulations. This includes introduction, export, quarantine, brands and transportation of livestock.

12.C. The permittee agrees to the counting of his livestock. In the event the permittee fails to round up his livestock for the purpose of allowing a count of the livestock, the Tribal Ranger will round up and count said livestock at the expense of the permittee.

12.D. While the range improvement program is in progress, if it is necessary to close improved areas for a period of time while the land is developed, the permittee will not be allowed to graze these areas or allow livestock to stray onto these areas.

12.E. Within five calendar days of seeing any unclaimed livestock, marked or unmarked, drifting around the Zuni Reservation range units, it is the responsibility of the permittee to report these livestock to a Tribal Ranger or any Law Enforcement Officer. After 30 calendar days, the unclaimed livestock will become the property of the Zuni Tribe and the Tribal Rangers have the responsibility for the disposition of the animals.

12.F. In the event of a range unit boundary dispute, the affected parties will be notified and allowed 30 calendar days to agree to a resolution. If the parties cannot agree, they will be allowed 30 calendar days to present their case to the Zuni Livestock Committee. The Zuni Livestock Committee will make a decision within 30 calendar days of the final hearing. Any appeals of the Livestock Committee's written grazing decisions will be made to the Governor and Tribal Council within 30 calendar days of the Livestock Committee's written grazing decision. The decision of the Tribal Council and Governor shall be final.

12.G. Permittees will not allow non-permitted livestock to graze on their permitted range unit.

12.H. Donated livestock obtained during religious activities will not be used to establish livestock herds.

12.I. Locked gates will not be allowed on any range unit unless approved by the Governor and Tribal Council.

SECTION 13: THE RANGE IMPROVEMENT FUND.

13.A. The Range Improvement Fund will be comprised of monies received from penalties from trespass violations ordered by the Zuni Tribal Court, collection of grazing rental fees and other fees, and the disposition of unclaimed livestock.

13.B. The Range Improvement Fund will be administered by the Zuni Finance Department. The Tribal Council, upon recommendation from the Zuni Division of Natural Resources, will determine the spending priorities and these priorities will be based on the best range resource needs. Stipends for the Zuni Livestock Committee will be paid from the Range Improvement Fund.

13.C. A stipend of \$20.00 will be paid to each voting Livestock Committee Member attending the regular scheduled monthly meeting, if a quorum is present.

**END OF TITLE XVII. PUEBLO OF ZUNI RANGE CODE
[MARCH 7, 2005, RESOLUTION NO. M70-2005-Q015]**

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TITLE XVIII. ZUNI FOOD SERVICE CODE

§18-1-1. Definitions.

For the purpose of this Food Service Code the following definitions shall apply:

(1) "Adulterated" shall mean the condition of a food (a) if it bears or contains any poisonous or deleterious substance in a quantity, which may render it injurious to health; (b) if it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by regulation, or in excess of such tolerance if one has been established; (c) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption; (d) if it has been processed, prepared, packed, or held under unsanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; (e) if it is in whole or in part the product of a diseased animal, or an animal which has died otherwise than by slaughter; (f) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (g) if it contains or bears filtered substance.

(2) "Food Service Establishment" shall mean restaurant, coffee shop, cafeteria, short order cafe, luncheonette, sandwich stand, soda fountain, and all other eating and drinking establishments, as well as kitchens or other places in which food or drink is prepared for sale elsewhere. This phrase also includes any establishment in which groceries, meat and/or meat products or any other food intended for human consumption are offered for sale or trade and/or all buildings incidental to such use.

(3) "Itinerant Restaurant" shall mean one operating for a temporary period in connection with a fair, rodeo, circus, celebration, or public exhibition. This shall include peddlers who sell food of any type.

(4) "Employee" shall mean any individual who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed in a room in which food or drink is prepared or served.

(5) "Utensils" shall include any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation or serving.

(6) "Health Advisor" shall mean the Service Unit Director of the U.S. Public Health Service, Zuni Service Unit, Zuni, New Mexico or his authorized representative.

§18-1-2. Permits.

(1) No person shall operate a food service establishment within the Zuni Reservation who does not possess a valid permit from the Tribal Council. Such permit shall be posted in a conspicuous place. Only persons who comply with the requirements of this Code and regulations issued hereunder shall be entitled to receive and retain such a permit. A person conducting an itinerant restaurant shall be required to secure a Health Permit as required herein.

(2) Such a permit may be temporarily suspended by the Tribal Council upon the violation by the holder of any of the terms of this Code and regulations issued hereunder or revoked after an opportunity for a hearing by the Tribal Council upon serious or repeated violation.

(3) No permit shall be transferable. Every person who succeeds to ownership or control of any food service establishment shall give notice in writing to the Tribal Council within 24 hours after having purchased, received by transfer or gift, or otherwise acquired interest in or control of any food service establishment. Such notice shall include the name and address of the previous owner of the food service establishment.

(4) Each person who succeeds to ownership or control of a food service establishment shall, within ten days, file application for a permit in the manner provided in these regulations. Failure to file such application for a permit within the said ten-day period shall result in suspension of the privilege to operate such food service establishment until compliance with these regulations.

(5) Application for permits shall be in writing, signed by the applicant and shall include the following:

(a) The name and address of the applicant.

(b) The location, name and legal description of the food service establishment's location.

(c) A description of the type of food service operation.

(6) Upon certification of the Health Advisor that a food service establishment for which an application for permit has been filed and shall meet the requirements of this Code and regulations issued hereunder, the Tribal Council may issue a permit.

(7) Any person whose application for permit under these regulations has been denied may request and will be granted a hearing before the Tribal Council under the procedure provided in this Code.

(8) Whenever, upon inspection of any food service establishment, which holds a permit, conditions or practices exist which are in violation of any provisions of these regulations, the Tribal Council shall give notice in writing to the person to whom the permit was issued that unless such conditions or practices are corrected within a reasonable period of time, as recommended by the Health Advisor, the permit will be suspended. At the end of such period, if such conditions or practices have not been corrected, the Tribal Council will give notice in writing to the permit holder that the permit has been suspended. Upon receipt of notice of suspension, such person shall cease operation of such food service establishment at once.

(9) Any person whose permit has been suspended, or has received notice from the Tribal Council that his permit will be suspended unless certain conditions or practices at the food service establishment are corrected, may request and will be granted a hearing on the matter before the Tribal Council as provided herein; provided that when no petition for such hearing shall have been filed within ten days following the day when such permit was suspended such permit shall be deemed to have been automatically revoked.

(10) The failure to obtain or maintain a permit may be cause for termination of any business license, lease, concession or agreement as negotiated between the food service establishment owner, operator, or his agent and the Zuni Tribe.

§18-1-3. Examination and Condemnation of Unwholesome or Adulterated Food or Drink.

Samples of food, drink, and other substances may be taken and examined by the Health Advisor as often as he may deem necessary.

§18-1-4. Inspections.

(1) The Tribal Council and/or Health Advisor are hereby empowered and authorized to make inspection and to obtain food samples for laboratory analysis to determine the conditions of the food service establishment.

(2) The Tribal Council and/or Health Advisor shall have the authority to enter at reasonable times the property and buildings of the food service establishment for the purpose of inspecting and investigating conditions relating to the enforcement of this Code and any regulations issued hereunder.

(3) It shall be the duty of owner or person in charge of the food service establishment to give the Tribal Council and/or Health Advisor free access to such premises at reasonable times for the purpose of inspections.

(4) Inspections of food service establishments will be made at least once every six months or more often if the Tribal Council or Health Advisor deems it necessary for the protection of the health of the people.

(5) When the inspection is made by the Health Advisor, he will leave with the management or person in charge a copy of the complete inspection report, which indicates the sanitary conditions of the establishment, which shall be displayed in a prominent place on the premises, and will forward two copies to the Tribal Council with the recommendation as to necessary action. Another copy of the inspection report will be filed with the records of the Health Advisor.

§18-1-5. Notices, Hearings and Orders.

(1) When the Health Advisor recommends action pursuant to violation of any of this Code and any regulations issued hereunder, the Tribal Council will give notice of such alleged violation to the person or persons responsible therefore as hereinafter provided. Such notice will

(a) be in writing;

(b) include a statement of the reasons for its issuance;

(c) allow a reasonable time for the performance of any action required;

(d) be served upon the owner or his agent; provided that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by certified mail to his last known address, or when he has been served by any other method authorized by the Tribal Council;

(e) contain an outline of remedial action, which if taken, will effect compliance with the provisions of this Code or any regulations issued hereunder.

(2) Any person affected by any notice which has been issued in connection with the enforcement of any provision of these regulations may request and will be granted a hearing on

the matter, before the Tribal Council; provided that such person shall file in the office of the Tribal Secretary a written petition requesting such hearing and setting forth a brief statement of the grounds therefore within ten days after the day notice was served. Upon receipt of such petition, the Tribal Council will set a time and place for such hearing and will give the petitioner written notice thereof. At the hearing, petitioners will be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing will be commenced not later than ten days after the day on which the petition was filed; provided that upon application of the petitioner, the Tribal Council may postpone the date of the hearing for a reasonable time beyond such ten day period if the petitioner has submitted a good and sufficient reason for such postponement.

(3) After such hearing, the Tribal Council with the consultation of the Health Advisor will sustain, modify, or withdraw the notice depending on the findings as to the compliance or noncompliance with this Code and regulations issued hereunder. If the Tribal Council shall sustain or modify such notices, it shall be deemed to be an order. Any notice served pursuant to this Section of this Code shall automatically become an order if a written petition for hearing shall have not been filed in the office of the Tribal Secretary within ten days after such notice was served. After a hearing in the case of any notice suspending any permit required by these regulations, when such notice shall have been sustained by the Tribal Council, the permit shall be deemed to have been revoked.

(4) The proceedings at such hearings including the findings and decisions of the Tribal Council shall be reduced to writing and entered as a matter of public record in the office of the Tribal Secretary of the Tribal Council. Such record shall include every notice or order issued in connection with the matter.

(5) Whenever the Health Advisor or the Tribal Council finds that an emergency matter exists which requires immediate action to protect public health, the Tribal Council will without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as is deemed necessary to meet the emergency. Notwithstanding any other provision of these regulations, such order shall be effective immediately, but upon petition to the Tribal Council petitioner will be afforded a hearing as soon as possible. After such hearing, depending upon the findings as to compliance or noncompliance with the provisions of this Code or any regulations issued hereunder, the Tribal Council may continue the order in effect, modify it or revoke it.

(6) The Tribal Council, upon the advice of the Health Advisor, may condemn and order the removal and destruction of food or drink which is deemed unwholesome, adulterated or misbranded under the Federal Food, Drug, and Cosmetic Act or otherwise.

§18-1-6. Sanitation Requirements for Food Service Establishments.

All food service establishments shall comply with all of the following items of sanitation:

(1) Food Supplies: All food in food service establishments shall be from sources approved or considered satisfactory by the Health Advisor and shall be clean, wholesome, free from spoilage, free from adulteration and misbranding, and safe for human consumption. No hermetically sealed, nonacid, low-acid food, which has been processed in a place other than a commercial food-processing establishment, shall be used.

(2) Food Protection: All food shall be protected while being stored, prepared, displayed, served, or sold at food service, establishments, or during transportation. All perishable food shall be stored at such temperatures as will protect against spoilage. All potentially

hazardous food shall be maintained at safe temperatures (45°F or below, or 140°F, or above), except during necessary periods of preparation and service. Raw fruits and vegetables shall be washed before use. Stuffing's, poultry, stuffed meats and poultry, and pork and pork products shall be thoroughly cooked before being served. Individual portions of food once served to the customer shall not be served again; provided, that wrapped food which has not been unwrapped and which is wholesome may be reserved.

(3) Storage of Poisonous or Toxic Materials: Only such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitation purposes may be used or stored in food service establishments. Poisonous and toxic materials shall be identified, and shall be used only in such manner and under such conditions as will not contaminate food or constitute a hazard to employees or customers.

(4) Health and Disease Controls: No person while affected with a disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any area of a food service establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or conditions shall be employed in such an area or capacity. If the manager or person in charge of the establishment has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the Health Advisor immediately.

(5) Cleanliness: All employees shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty. They shall wash their hands thoroughly in an approved hand washing facility before starting work, and as often as may be necessary to remove soil and contamination. No employee shall resume work after visiting the toilet room without first washing his hands.

(6) Sanitary Design, Construction and Installation of Equipment and Utensils: All equipment and utensils shall be so designated and of such material and workmanship as to be smooth, easily cleanable, and durable, and shall be in good repair; and the food contact surfaces of such equipment and utensils shall, in addition, be easily accessible for cleaning, nontoxic, corrosion resistant, and relatively nonabsorbent; Provided, that, when approved by the Health Advisor, exceptions may be made to the above material requirements for equipment such as cutting boards, blocks, and baker's tables. All equipment shall be so installed and maintained as to facilitate the cleaning thereof, and of all adjacent areas. Equipment in use at the time of adoption of this ordinance, which does not meet fully the above requirements, may be continued in use if it is in good repair, capable of being maintained in a sanitary condition, and the food-contact surfaces are nontoxic. Single service articles shall be made from nontoxic materials.

(7) Cleanliness of Equipment and Utensils: All eating and drinking utensils shall be thoroughly cleaned and sanitized after each usage.

(a) All kitchenware and food-contact surfaces of equipment, exclusive of cooking surface of equipment, used in the preparation or serving of food or drink, and all food storage utensils, shall be thoroughly cleaned after each use. Cooking surfaces of equipment shall be cleaned at least once a day. All utensils and food-contact surfaces of equipment used in the preparation, service, display, or storage of potentially hazardous food shall be thoroughly cleaned and sanitized prior to such use. Non-food contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.

(b) After cleaning and until use, all food contact surfaces of equipment and utensils shall be so stored and handled as to be protected from contamination.

(c) All single service articles shall be stored, handled and dispensed in a sanitary manner, and shall be used only once. Food service establishments, which do not have adequate and effective facilities for cleaning and sanitizing utensils, shall use single service articles.

(8) Water Supply: The water supply shall be adequate, of a safe, sanitary quality, and from an approved source. Hot and cold running water under pressure, shall be provided in all areas where food is prepared, or equipment, utensils, or containers are washed.

(a) Water, if not piped into the establishment, shall be transported and stored in approved containers, and shall be handled and dispensed in a sanitary manner.

(9) Sewage Disposal: All sewage shall be disposed of in a public sewerage system, or in the absence thereof, in a manner approved by the Health Advisor.

(10) Plumbing: Plumbing shall be so sized, installed, and maintained as to carry adequate quantities of water to required location throughout the establishment; to prevent contamination of the water supply; to properly convey sewage and liquid wastes from the establishment to the sewerage or sewage disposal system; and so that it does not constitute a source of contamination of food, equipment, or utensils, or create an unsanitary condition or nuisance.

(11) Toilet Facilities: Each food service establishment shall be provided with adequate, conveniently located toilet facilities for its employees. Toilet fixtures shall be of sanitary design and readily cleanable. Toilet facilities including rooms and fixtures, shall be kept in a clean condition and in good repair. The doors of all toilet rooms shall be self-closing. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials, and such receptacles in toilet rooms for women shall be covered. Where the use of non-water-carried sewage disposal facilities have been approved by the Health Advisor, such facilities shall be separate from the establishment. When toilet facilities are provided for patrons, such facilities shall meet the requirements of this subsection.

(12) Hand washing Facilities: Each food service establishment shall be provided with adequate, conveniently located hand washing facilities for its employees, including a lavatory or lavatories equipped with hot and cold or tempered running water, hand-cleansing soap or detergent, and approved sanitary towels or other approved hand-drying devices. Such facilities shall be kept clean and in good repair.

(13) Garbage and Rubbish Disposal: All garbage and rubbish containing food wastes shall, prior to disposal, be kept in leak-proof, nonabsorbent containers which shall be kept covered with tight-fitting lids when filled or stored, or not in continuous use: Provided, that such containers need not be covered when stored in a special vermin-proofed room or enclosure, or in a food waste refrigerator. All other rubbish shall be stored in covered containers, rooms, or areas in an approved manner. The rooms, enclosures, areas, and containers used shall be adequate for the storage of all food waste and rubbish accumulating on the premises. Adequate cleaning facilities shall be provided, and each container, room, or area shall be thoroughly cleaned after the emptying or removal of garbage and rubbish. Food-waste grinders, if used shall be installed in compliance with State and local standards and shall be of

suitable construction. All garbage and rubbish shall be disposed of with sufficient frequency and in such a manner as to prevent a nuisance. Food waste shall not be utilized for animal feeding.

(14) Vermin Control: Effective measures shall be taken to protect against the entrance into the establishment and the breeding or presence on the premises of vermin. Only pesticides approved by the Food and Drug Administration and/or Environmental Protection Agency shall be used.

(15) Floors, Walls, and Ceiling: The surfaces in kitchens, in all other rooms and areas in which food is stored and prepared and in which utensils are washed, and in walk-in refrigerators, dressing or locker rooms, and toilet rooms, shall be of smooth, nonabsorbent materials, and so constructed as to be easily cleanable: Provided, that the floors of non-refrigerated, dry food storage areas need not be nonabsorbent. All floors shall be kept clean and in good repair. Floor drains shall be provided in all rooms where floors are subjected to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor. All exterior areas where food is served shall be kept clean and properly drained, and surfaces in such areas shall be finished so as to facilitate maintenance and minimize dust.

(a) The walls and ceilings of all rooms shall be kept clean and in good repair. All walls of rooms or areas in which food is prepared, or utensils or hands are washed, shall be easily cleanable, smooth, and light colored and shall have washable surfaces up to the highest level reached by splash or spray.

(16) Lighting: All areas in which food is prepared or stored or utensils are washed, hand washing areas, dressing or locker rooms, toilet rooms, and garbage and rubbish storage areas shall be well lighted. During all clean-up activities, adequate light shall be provided in the area being cleaned, and upon or around equipment being cleaned.

(17) Ventilation: All rooms in which food is prepared or served or utensils are washed, dressing or locker rooms, toilet rooms, and garbage and rubbish storage areas shall be well ventilated. Ventilation hoods and devices shall be designed to prevent grease or condensate from dripping into food or onto preparation surfaces. Filters, where used, shall be readily removable for cleaning or replacement. Ventilation systems shall comply with applicable State and local fire prevention requirements and shall, when vented to the outside air, discharge in such a manner not to create a nuisance.

(18) Dressing Rooms and Lockers: Adequate facilities shall be provided for the orderly storage of employees' clothing and personal belongings. Where employees routinely change clothes within the establishment, one or more dressing rooms or designated areas shall be provided for this purpose. Such designated areas shall be located outside of the food preparation, storage and serving areas, and the utensil washing and storage areas: Provided, that when approved by the Health Advisor, such an area may be located in a storage room where only completely packaged food is stored. Designated areas shall be equipped with adequate lockers, and lockers or other suitable facilities shall be provided in dressing rooms. Dressing rooms and lockers shall be kept clean.

(19) Housekeeping: All parts of the establishment and its premises shall be kept neat, clean and free of litter and rubbish. Cleaning operations shall be conducted in such a manner as to minimize contamination of food and food-contact surfaces. None of the operations connected with a food service establishment shall be conducted in any room used as living or sleeping quarters. Soiled linens, coats, and aprons shall be kept in suitable containers until removed for laundering. No live bird or animal shall be allowed in any area used for the conduct

of food service establishment operations: Provided, that guide dogs accompanying blind persons may be permitted in dining areas.

§18-1-7. Review of Plans.

Whenever any alteration, modification, or new construction of a food service establishment is contemplated by the operator or prospective operator, three sets of plans and specifications shall be submitted to the Health Advisor for review. The Health Advisor will recommend approval or such modification as may be necessary for approval.

§18-1-8. Temporary Food Service Establishments and Itinerant Restaurants.

A temporary food service establishment shall comply with all provisions of this ordinance which are applicable to its operation: Provided, that the Tribal Council, on the advice of the Health Advisor, may augment such requirements when needed to assure the service of safe food; may prohibit the sale of certain potentially hazardous food; and may modify specific requirements for physical facilities when in his opinion no imminent health hazard will result.

§18-1-9. Food Service Establishments, Which May Operate.

From and after two (2) months from the date on which this Code takes effect, no food service establishment shall be operated within the Zuni reservation unless it conforms with the requirements hereof; Provided, that when any food service establishment fails to qualify, the Tribal Council is authorized to suspend the permit.

§18-1-10. Reinstatement of Permit.

(1) Any food service establishment, the permit of which has been suspended, may at any time make application for the reinstatement of the permit.

(2) Within one week after the receipt of a satisfactory application, accompanied by a statement signed by the applicant to the effect that the violated provision or provisions of this ordinance have been conformed with, a re-inspection shall be made and thereafter as many re-inspections as may be deemed necessary to assure that the applicant is again complying with the requirements; and, in case the findings indicate compliance, shall recommend reinstatement of the permit within one week after such compliance.

§18-1-11. Procedure When Infection Suspected.

When suspicion arises as to the possibility of disease transmission from any food service establishment employee, the Tribal Council upon recommendation of the Health Advisor is authorized to require any or all of the following measures:

- (1) The immediate exclusion of the employee from all food service establishments.
- (2) The immediate closing of the food service establishment concerned until no further danger of disease outbreak exists.
- (3) Adequate medical examination of the employee and other employees with such laboratory examinations as may be indicated.

§18-1-12. Enforcement Interpretation.

(1) This Ordinance shall be enforced by the Tribal Council in accordance with the interpretations contained in the 1962 (or any future revisions thereof) Food Service Sanitation Manual, Public Health Service Publication No. 934, U.S. Department of Health, Education, and Welfare, Public Health Service, a certified copy of which shall be on file in the Tribal Secretary's Office.

(2) The Tribal Court shall hear appeals from any action of the Tribal Council under this Code and shall have jurisdiction to compel compliance with this Code by means of injunction or otherwise and shall handle any criminal offenses arising hereunder.

(3) The Tribal Council may by resolution adopt rules and regulations not inconsistent with this Food Service Code to supplement the provisions herein and when adopted such rules and regulations shall have the force of law as if adopted as a part of the Code.

§18-1-13. Penalties.

(1) Any person found in violation of these regulations and whom remains in violation after exhausting remedies provided herein shall forfeit his right to do business within the Zuni Reservation.

(2) It shall be a Class B criminal offense for any person to:

(a) Operate a Food Service Establishment on the Reservation without obtaining a permit as required herein or after obtaining such a permit after it has been suspended or revoked or expired.

(b) Knowingly serve adulterated food at a food service establishment.

(c) Knowingly violate any provision of the Food Service Code or any regulations adopted by the Tribal Council hereunder.

END OF TITLE XVIII. ZUNI FOOD SERVICE CODE

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TITLE XIX ZUNI WASTE DISPOSAL CODE

CHAPTER 1. GENERAL PROVISIONS

§19-1-1. Declaration of Purpose and Policy.

This Waste Disposal Code is intended to provide for the regulation of the collection, storage and disposal of solid and liquid waste on lands within the Zuni Reservation to preserve the public health, safety and welfare by prevention of nuisances and hazards resulting from the creation of hazardous or noxious conditions.

§19-1-2. Definitions.

For the purpose of this waste Disposal Code, the following meanings are established.

(1) "Department" shall mean the Department of Public Works of the Zuni Reservation or similar utilities management system approved by the Tribal Council.

(2) "Director" shall mean the Director of Public Works or person in charge of utilities and maintenance that has been appointed by the Governor and/or Tribal Council.

(3) "Person" shall mean any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency or any other legal entity or their legal representative.

(4) "Garbage" shall mean all putrefaction of animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food in any private dwelling house, multiple dwelling, hotel, restaurant, building or institution.

(5) "Rubbish" shall mean all cardboard, plastic, metal or glass food containers, waste paper, rags, sweepings, small pieces of wood, excelsior, rubber, leather and similar waste materials that ordinarily accumulate around a home, business or industry. It shall not include garbage, ashes, bulk refuse, dead animals, hazardous refuse, industrial waste, or building waste resulting from the operations of a contractor.

(6) "Mixed Refuse" shall mean garbage and rubbish placed and stored together in a standard refuse container or in a substitute refuse container as required by this Code.

(7) "Ashes" shall mean the residue of the combustion of solid fuels.

(8) "Bulk Refuse" shall mean discarded household furniture, beddings and mattresses, leaves, lawn cuttings, tree trimmings and hedge trimmings.

(9) "Dead Animals" shall mean animals that have died naturally or have been accidentally killed.

(10) "Hazardous Refuse" shall mean any refuse, the handling or disposal of which, in the opinion of the Director, would constitute a danger to Department employees or Reservation persons or property.

(11) "Household Waste" shall mean mixed refuse, ashes, and bulk refuses originating in and around private dwellings, multiple dwellings, living quarters or dining facilities located in schools.

(12) "Institutional Waste" shall mean mixed refuse and ashes originating in and around tax exempt hospitals and public, charitable, philanthropic or religious institutions conducted for the benefit of the public or a recognized section of the public. Institutions not covered by the foregoing definition shall be considered commercial establishments.

(13) "Commercial Waste" shall mean rubbish, mixed refuse and ashes originating in and around commercial establishments, industrial establishments, restaurants, cafeterias and non- public institutions.

(14) "Industrial Waste" shall mean any and all residue resulting directly from industrial or manufacturing operations. It shall not include waste originating from commercial operations of persons, firms or corporations engaged in the construction of buildings, the repairing of streets and buildings, demolition or excavation. Residue or waste resulting from tree or landscaping services shall also be excluded.

(15) "Building Waste" shall mean any and all refuse or residue resulting directly from building construction, reconstruction, repair or demolition, from grading, scrubbing or other incidental work in connection with any premises, or from replacement of building equipment or appliances.

(16) "Building Debris" shall mean any refuse or residue resulting from minor non-commercial repairs to a private dwelling made by the owner or occupant himself.

(17) "Absorption Field" shall mean an area in which open joint or perforated piping is laid in gravel-packed trenches or excavations for the purpose of distributing the effluent discharged from a tank used as a part of an individual liquid waste disposal system for absorption into the soil.

(18) "Tank" shall mean a watertight receptacle, which receives liquid waste from the sanitary drainage system of the building and in which bacterial assimilation of the organic matter takes place.

(19) "Septic Tank System" shall mean a tank, which is designed and constructed to separate solids from the liquid waste and digest organic matter through a period of detention together with an absorption field.

(20) "Individual Liquid Waste Disposal System" shall mean a disposal system which receives 2,000 gallons or less of liquid waste per day and includes but is not limited to septic tanks, aerobic disposal systems, evapotranspiration systems and spray irrigation systems.

(21) "Privy" shall mean any non-water carried disposal facility for human excreta.

(22) "Modify" shall mean to change the method of liquid waste disposal, to enlarge the liquid waste disposal system, to alter the location of the absorption field or major component to substantially increase the amount of liquid waste. received by the liquid waste disposal system to over 2,000 gallons per day.

§19-1-3. Investigations and Penalties.

(1) The Director and the Department shall have power to enter at reasonable times upon public or private property to investigate conditions relating to enforcement of this Code.

(2) It shall be a Class C criminal offense for any person to do any act declared to be unlawful by this Waste Disposal Code. Each day of continuing violation shall be deemed a separate offense.

(3) The Tribal Court shall have authority to enjoin violations of this Waste Disposal Code in a civil proceeding, in addition to any criminal penalties available hereunder.

CHAPTER 2. SOLID WASTE

§19-2-1. Responsibility for Solid Waste.

(1) The collection, storage, hauling and disposal of solid waste on the Zuni Reservation shall be under the regulation of the Tribal Council and shall be under the supervision of the Director of Public Works. The Director shall have power to take such measures as he shall deem effectual for the collection, storage, removal and disposal of solid waste from the Zuni Reservation consistent with the provisions of the Code.

(2) It shall be the duty of the Director to strictly enforce the provisions of this Code and to see that any and all violations thereof are promptly abated and the violators prosecuted. It shall be the duty of the Tribal Police, Roads Department and Public Works Department to give attention throughout the Reservation to any and every case of violation of this Code and to promptly report to the Tribal Council and/or Director every such violation which shall come to their knowledge.

§19-2-2. Functions and Powers.

(1) The Tribal Council shall have the responsibility and power to promulgate regulations:

(a) To implement and enforce this Code for promotion of public health and safety.

(b) To regulate and control the storage, collection, and disposal of refuse.

(c) To provide a public refuse disposal site or sites for refuse by establishing, maintaining and operating such site (sites).

(2) The Director or his representatives shall, subject to approval by the Tribal Council:

(a) Supervise collection removal and disposal of all refuse.

(b) Establish and approve a schedule of collections.

(c) Designate special and regular collection points.

(d) Establish rules and guidelines as may be necessary, reasonable and proper for the successful operation of the program.

(e) Establish fee schedules for collection and/or disposal.

(f) Make regular inspections of containers, receptacles, and disposal sites to assure compliance with this Code.

- (g) Issue citations for violations of this Code.

§19-2-3. Applicability of Code.

Any person, firm or corporation who shall collect, transport or dispose of garbage or refuse within the Zuni Reservation shall be subject to all rules, regulations, safety procedures or other directives that shall be established by the Council and/or the Director.

§19-2-4. Collection.

(1) The Tribe, under the Department of Public Works, shall operate a refuse collection program within the Zuni Reservation for the collection of all solid waste with the exception of those considered special by the Director. The collection schedule shall be determined by the Director but shall be a minimum of once a week for household wastes and as often as necessary for commercial, industrial and institutional waste so as to protect the health and safety of the citizens of the Zuni Reservation.

(2) All toxic or hazardous industrial waste shall be disposed of by those who generate such waste. Such disposal shall be conducted according to procedures approved by the Director and shall not pollute the environment.

(3) All pathogenic and radioactive waste shall be disposed of by the hospital, institution or industry generating such waste. Such disposal shall comply with procedures approved by the Director.

(4) When not in actual use, all collection vehicles shall be covered so as to prevent flies, offensive odors or loss of garbage.

(5) Building waste will not be removed by the Department and the contractor must be responsible for correct disposal of such waste. The Department operated landfill will not be used for this disposal.

(6) Building debris, if not excessive, can be transported to and disposed of in the landfill by the owner or occupant. Excessiveness will be determined by the Director or his representative.

§19-2-5. Storage.

(1) Only wastes stored in proper containers as determined by the regulations of the Public Works Department shall be collected. All storage containers shall be approved by the Director or his representative. The standard container shall be a watertight metallic receptacle with suitable handles and a tight fitting cover. It shall have a capacity of between five (5) and 32 gallons and a weight not to exceed 100 pounds when filled.

(2) The garbage and/or trashcans must be kept in an easily accessible place upon the premises of the owner or occupant.

(3) Tree trimmings, hedge clippings, cardboard containers and other bulk refuse must be securely tied in bundles not exceeding 48 inches in diameter and 100 pounds in weight.

§19-2-6. Transportation of Solid Waste.

The body of each vehicle used for the collection of solid waste shall be of metal construction with watertight welded construction. Compactor-type bodies that are completely enclosed shall be provided for all vehicles used for the collection of solid wastes from residential properties. Vehicles used solely for collection of noncombustible and nonputrescible materials shall have permanently attached covers of rigid construction or canvas-like materials with suitable fasteners. All vehicles used for collection of solid waste shall be constructed and equipped so as to prevent the vehicle enroute to the disposal site.

§19-2-7. Disposal.

(1) The Tribe will operate a sanitary landfill for the disposal of combined garbage and refuse. The following refuse shall be considered not acceptable for disposal in the operated sanitary landfill.

(a) Dangerous material or substances such as poisons, acids, caustics, infected materials and explosives.

(b) Materials resulting from the construction or wrecking of buildings and structures by commercial companies.

(c) All large and bulky materials such as auto car bodies that may require special preparation and processing for disposal.

(2) Acceptable rubbish and mixed refuse and household or commercial ashes transported to the Department operated landfill by any person shall be accepted by the Department for disposal during designated hours of operation.

(3) Public dumping grounds shall be regulated by the Tribal Council and under the control and jurisdiction of the Director of Public Works. The Director shall establish rules and regulations as to the time and conditions of use of such dumping grounds. It shall be unlawful for any person to use such dumping grounds except in compliance with such rules and regulations.

(4) It shall be unlawful for any person to set fire to, or burn any papers, trash or garbage deposited upon the dumping grounds used by the Department for the depositing or dumping of such solid wastes without the permission of the Director of Public Works authorizing and directing such burning.

(5) All materials delivered and deposited on the landfill areas are the property of the Zuni Tribe and no person shall separate, collect, carry off or dispose of such materials unless authorized to do so by the Tribal Council.

(6) No person shall throw, drop or deposit or cause to be thrown, dropped or deposited on any premises or vacant property on the Reservation any waste (including, but not limited to, garbage, ashes, rubbish, building waste, dead animals, putrefaction matter and anything injurious to health), provided however, that the prohibition contained in this paragraph shall not apply to the deposit of wastes not injurious to health on a public site where permission to make such deposits is granted by the Tribal Council or its representative, nor to the filling in or grading of property with earth, mud, ashes, and similar materials.

(7) All disposal sites shall be covered as often as feasible with the existing equipment.

§19-2-8. Prohibited Activities.

- (1) It shall be unlawful to deposit any solid waste materials on any public or private property except those designated as dumping areas by the Tribal Council or Director.
- (2) It shall be unlawful for refuse to be placed in any body of water.
- (3) It shall be unlawful to burn refuse in streets and alleys. Rubbish may be burned on individual property subject to local fire regulations. No garbage or other material, which would create offensive, obnoxious fumes and/or odors, shall be burned.
- (4) It shall be unlawful to permit accumulation of weeds, garbage, trash or other refuse on the premises.
- (5) No live or hot coals or ashes shall be placed in or with any mixed waste.
- (6) No human or animal excrement shall be placed for collection except solid animal excrement may be placed in a waste container if securely wrapped or contained.
- (7) It shall be unlawful to interfere with the collection, storage or disposal of refuse, garbage or rubbish by any person.

CHAPTER 3. ADMINISTRATION

§19-3-1. Administration of Liquid Waste Disposal.

The installation of sewage systems and the resulting disposal of liquid waste on the Zuni Reservation shall be under the regulation of the Tribal Council and shall be under the supervision of the Director of Public Works or another person appointed by the Governor and the Tribal Council. The Director shall have power to take such measures as he shall deem effectual to insure the proper installation of sewage systems, and the sanitary disposal of liquid waste.

§19-3-2. Functions and Powers.

- (1) The Council shall have the responsibility and power to promulgate regulations to implement and enforce this Chapter for promotion of public health and safety.
- (2) The Director or other Tribal appointed official or their representatives shall, subject to approval by the Tribal Council:
 - (a) Supervise the installation of any sewage system and give approval to location, construction methods and materials.
 - (b) Establish and approve a schedule of use of any Tribal owned sewage pumper truck.
 - (c) Establish rules and regulations as may be necessary, reasonable and proper for the successful disposal of liquid waste.
 - (d) Be responsible to see that proper maintenance is maintained on all Tribal owned sewage systems and equipment.

(e) Make regular inspection of the sewage system and systems that are under construction to assure compliance with this Code.

§19-3-3. Standards.

(1) Any person, firm or corporation who shall use, or install a sewage or liquid waste system within the Zuni Reservation shall be subject to all rules, regulations, safety procedures or other directives that shall be established by the Council and/or the Director.

(2) The Zuni Reservation under the Department of Public Works or the Director/Appointee shall employ a maintenance crew that shall be responsible for upkeep on the Tribal owned water and sewage facilities of the Reservation.

(3) All toxic or hazardous industrial liquid waste shall be disposed of by those who generate such waste. Such disposal shall be conducted according to procedures approved by the Director and shall not pollute the environment.

(4) All pathogenic and radioactive waste shall be disposed of by the hospital, institution or industry generating such waste.

(5) Any person installing, renovating or enlarging a sewage system must acquire a permit to do so from the Director.

(6) Any privies constructed must meet the requirements established by the Director.

END OF TITLE XIX. ZUNI WASTE DISPOSAL CODE

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TITLE XX. ZUNI LABOR CODE

CHAPTER 1. POLICY AND DEFINITIONS

§20-1-1. Employment and Training Policy.

(1) The Zuni Tribe believed that it is important to create employment and training opportunities for Zuni and other Indians and to eradicate discrimination against Indian people. An integral part of attaining this goal is by structuring employment and training opportunities on the Zuni Reservation to provide for the hiring of Indians where qualified, and through the training of Indians where there are not sufficient qualified Indians to meet the employment Opportunities.

(2) Nothing contained in this code shall violate or undermine federal requirements on Equal Employment Opportunity; namely Title VII prohibits preferential employment on the basis of race, color, sex, or national origin. However, Title VII contains a special exception, which makes Indian preference permissible. Section 703 (i) states, "Nothing contained in this title shall apply to any business or enterprise on or near an Indian Reservation with regard to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian.

(3) The U.S. Congress justifies tribes' power to impose preferential requirements on the grounds that: "This exemption is consistent with the Federal Government's policy of encouraging Indian employment and with the special legal position of Indian."

(4) In January 1977, the OFCCP issued regulations which states, "Work on or near Indian Reservations. It shall not be a violation of equal opportunity clause for a construction or non-construction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian Reservation. The use of the work "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis or religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter."

§20-1-2. Fair Labor Standard Policy.

(Reserved)

§20-1-3. Definitions; As used in this title:

(1) The term "commerce" includes all-trade, traffic distribution, communication, transportation, provision of services, manufacturing, production, agricultural production, building, maintenance, construction, banking, mining and gas and oil production.

(2) The term "employee" shall include any employee or applicant for employment, and shall not be limited to the employees of a particular employer, unless a section explicitly states otherwise, and shall include any individual whose work has cease as a consequence of, or in connection with any current labor dispute or because of any unfair labor practices, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed in the, domestic services of any family or person at his home, or any individual employed by any other person who is not an employer as herein defined.

(3) The term "employee on the Zuni Reservation" shall include any employee who, in a non-supervisory or non-managerial position, spends more than one-tenth of his working hours per month or per pay period, whichever is shorter, on the Zuni Reservation; and shall include any employee who, is a supervisory or managerial position, spends more than one-twentieth of his working hours per month or per pay period, whichever is shorter, on the Zuni Reservation.

(4) The term "employer" includes, but is not limited to, any person who engages in commerce through, paid, agents or servants, who hire or contract for services, within the exterior boundaries of the Zuni Reservation. The term "employer" includes any person acting as an agent, contractor or subcontractor of an employer, directly or indirectly, but shall not include the United States or any wholly owned government corporation, or any state or political subdivision thereof; but shall include independent contractors and subcontractors of the United States or of any wholly owned Government corporation or any State or of political subdivision thereof.

(5) The term covered employer includes any employer who employs five or more employees on the Zuni Reservation for more than two months, or on an intermittent but continuing basis.

(6) The term "Indian" means: a) Any member of any recognized Indian Tribe now under Federal jurisdiction; b) Descendants of members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation; c) All others of one-half or more Indian blood of tribes indigenous to the U.S., Eskimos and other aboriginal people of Alaska, and; d) Until January 17, 1981 a descendent of at least fourth degree Indian ancestry, of a currently Federally recognized tribe whose rolls have been closed by an Act of Congress.

(7) The term "Indian owned firm or entity" means any commercial, industrial or business activity, which is owned by an Indian, or Indians, or other Indian owned firm or entity, provided that such Indian ownership constitutes not less than 51% of the enterprise.

(8) The term "Indian Preference" means that Indians resident on the Zuni Reservation, without regard to tribal affiliation, are given preference over non-resident Indians in employment and training, and that Indians are given preference over non-Indians in employment and training.

(9) The term "Indian resident on the Zuni Reservation" or "resident Indian" means any Indian person, without regard to tribal affiliation, who at the time any contract for on-reservation work is let or (in the case of employment offers made by an employer permanently located on the Zuni Reservation) at the time any offer of individual on-reservation employment is made, has resided on the Zuni Reservation for not less than the preceding sixty (60) days.

(10) The term "non-resident Indian" includes all Indians who are not resident Indians within the definition in 20-1-3(9).

(11) "Notice" as it is required to be given by the Employment Rights Officer, shall be sufficient as to unnamed parties in an action, all interested persons who are not parties to an action, and in all instances where a specific person is not addressed, if it is posted in a public place in the Pueblo of Zuni for not less than five working days and is on file in the office of the Employment Rights Officer and open to public inspection

(12) The term "person" shall include both natural persons and artificial persons, including, but not limited to, corporations, trusts, partnerships, unions, agents, societies, sole proprietorships, and estates of decedents.

(13) The term "union" or "labor union" means any organization, of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purposes, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

CHAPTER 2. JUDICIAL REVIEW

§20-2-1. Filing.

Any person aggrieved by an order of the Employment Rights Officer, may obtain review of such order in the Zuni Tribal Court by filing in such court, within 20 days after notice of such order, a written petition praying that the order of the Employment Rights Officer be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the Clerk of the court to the Employment Rights Officer, and thereupon the Employment Rights Officer shall file in the court the record of the proceeding upon which the order complained of was entered.

§20-2-2. Jurisdiction.

Upon the filing of the petition, the Zuni Tribal Court shall have exclusive jurisdiction to affirm, modify or set aside such order, in whole or in part, so far as it is applicable to the petitioner. The review by the Zuni Tribal Court shall be limited to questions of law. Finding of fact by the Employment Rights Officer when supported by substantial evidence shall be conclusive. No objection to the order of the Employment Rights Officer shall be considered by the court unless such objection shall have been urged before the Employment Rights Officer or unless there were reasonable grounds for failure to do so.

§20-2-3. Additional Evidence.

If a party wants to introduce additional evidence, not presented before the Employment Rights Officer, they may petition the court. For good cause, the court may order the Employment Rights Officer to conduct a new hearing allowing new evidence. Good cause shall require that the new evidence is important and could not be presented at the prior hearing through no fault of the party seeking the new hearing.

§20-2-4. Judgment.

The judgment and decree of the Zuni Tribal Court shall be final, subject to review by the Zuni Appeals Court shall be deemed denied if no action is taken by the Zuni Appeals Court on the petition within 20 days.

§20-2-5. Effect of Proceedings.

The commencement of proceedings under §20-2-1 shall not, unless specifically ordered by the Court, operate as a stay of the Employment Rights Officer's order. The Court may order bond to be posted or other appropriate action, prior to entering a stay of the Employment Rights Officer's order.

CHAPTER 3. EMPLOYMENT RIGHTS OFFICE

§20-3-1. Employment Rights Office.

(1) The Zuni Tribal Employment Rights Office is hereby established with the full supervisory authority to vest in the Employment Rights Officer, who shall be an independent officer of the Tribe, reporting directly to the Tribal Council.

(2) The Employment Rights Officer shall be appointed by the Tribal Council. The Employment Rights Officer shall have the authority to hire staff, expend funds appropriated by the Tribal Council and, subject to prior approval by the Tribal Council, to obtain and expand funding from Federal, State, or other sources to carry out the purpose of his office. The Officer shall have the authority to issue rules, regulations, and guidelines to implement, the employment rights requirements imposed by the Zuni Labor Code, to hold hearings, to subpoena witnesses and documents, to require employers to submit reports, to issue cease and desist orders, to petition the Zuni Tribal Court for removal orders, and to take such other actions as are necessary for the fair and vigorous implementation of the Zuni Labor Code. The Employment Rights Officer may appoint another person to serve as Employment Rights Officer for the conduct of any hearing.

§20-3-2. Scope of Indian Preference.

All employers are hereby required to give preference to Indians in hiring, promotion, training and all other aspects of employment and in subcontracting. Employers shall comply with the rules, regulations, and guidelines of the Employment Rights Officer in regard to Indian preference.

§20-3-3. Union Agreements.

Any covered employer who has a collective bargaining agreement with one or more unions, shall obtain written agreements from said union(s) stating that the union shall comply with the Indian Preference laws, rules, regulations, and guidelines of the Zuni Tribe. Such agreement(s) shall be subject to the approval of the Employment Rights Officer, in order to ensure that all such agreements comply with the intent of this section. Such agreement(s) and approval does not constitute official tribal recognition or sanction of any union.

§20-3-4. Remedial Action.

(1) If an employer fails to comply with the laws, rules, regulations, or guidelines on employment rights of the Zuni Tribe or fails to obtain the necessary agreements from its signatory unions, the Employment Rights Officer shall take remedial action to correct the problem. Such remedies may include, but are not limited to; denial of the right to commence business on the Zuni Reservation, imposition of costs incurred in investigating, presenting or litigating the issue of violations, suspension of the employer's operation, termination of the employer's operation, denial of the right to conduct any further business on the Zuni Reservation, payment of back pay or other relief to correct any harm done to aggrieved Indians and the summary removal from the Zuni Reservation of non-resident employees hired in violation of the Zuni Tribe's employment rights requirements. The Employment Rights officer shall determine remedies, after allowing the employer an opportunity to present evidence showing why it did not violate the requirements, or why no remedial action is required.

(2) The Employment Rights Officer shall get a Court Order from the Zuni Tribal Court in order to enforce a removal order under this section. All other orders of the Employment Rights Officer are self-executing.

§20-3-5. Implementation.

In implementing the requirements of this chapter, the Employment Rights Officer is authorized to:

(1) Impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire, by craft or skill level; or in the Employment Rights Officer's discretion, to set percentage hiring goals by craft or skill level for specified employment fields.

(2) Require covered employers to establish or participate in such training programs as the officer deems necessary to increase the pool of Indians eligible for employment on or off the Zuni Reservation.

(3) Establish in conjunction with the Tribal Personnel Office a Tribal hiring hall and impose a requirement that no covered employer may hire a non-Indian until the Tribal hiring hall has certified that no qualified Indian is available to fill the vacancy.

(4) Prohibit any covered employer from using job qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required, by business necessity.

(5) Enter into agreements with unions to ensure union compliance with the Zuni Labor Code

(6) Require employers to give preference in the award to subcontracts to tribally and other Indian owned firms and entities.

(7) Establish programs subject to the Tribal Council's approval, in conjunction with Tribal and Federal offices, to provide counseling and support to Indian workers, to assist them to retain employment. Employers shall be required to participate in and/or cooperate with such support and counseling programs.

§20-3-6. Regulations.

(1) In issuing rules, regulations and guidelines the Employment Rights Officer is to be guided by the policy and standards enumerated throughout the Zuni Labor Code, and such further resolutions as the Tribal Council may issue. The Employment Rights Officer shall insure that all rules, regulations and guidelines that are issued provide due process.

(2) Except in cases where the Employment Rights Officer has determined that an emergency situation exists, the Employment Rights Officer shall follow the following minimal procedures in issuing all rules, regulations and guidelines.

(a) All proposed rules, regulations and guidelines shall be sent to the Tribal Council and shall be posted in a public place in the Pueblo of Zuni and in a file in the office of the Employment Rights Officer, which is open to public inspection, for not less than 20 days.

(b) The Employment Rights Officer shall accept comments from any interested parties during said 20 days. The Employment Rights Officer shall discuss in the preamble to such final rules, regulations, and guidelines, the major issues raised by the comments, if any.

(c) The final rules, regulations, and guidelines shall go into effect upon being posted in a public place in the Pueblo of Zuni and in a file in the office of the Employment Rights Officer, which is open to public inspection.

§20-3-7. Employment Rights Fee.

An Employment Rights Fee, to raise revenue for the operation of the Zuni Tribal Employment Rights Office, is hereby authorized to be imposed by the Employment Rights Officer as follows:

(1) Every covered construction contractor with a contract of \$100,000 or more on the Zuni Reservation or with the Zuni Tribe or an agency thereof, shall pay a one-time fee of one half of one percent of the total amount (gross contract price) of the, contract, per each contract. The fee may be paid in installments over the length of the contract.

(2) Every covered employer, other than construction contractors, with twenty or more employees on the Zuni Reservation, or gross sales of \$100,000 or more, regardless of sources, shall pay an annual fee of one-half of one percent of the annual payroll of employees on the Zuni Reservation of that employer. This fee shall not apply to educational, health governmental, or nonprofit employers.

(3) Such fees shall be paid to the Zuni Tribe and shall be placed in a special account to be used to meet the operating costs of the Officer. The Employment Rights Officer shall be responsible for collecting said fees and is authorized to establish such rules and regulations as are necessary to insure a fair and timely fee collection process. An employer or contractor who fails to pay the required fee shall be subject to the remedial actions provided for in §20-3-4 of the Code. The Employment Rights Officer is authorized to develop regulations allowing for the rebate of some or all of the fees paid by an employer according to the extent that an employer is found to be in compliance with the requirements imposed by this chapter and is making a substantial effort to employ, train, and promote Indians.

§20-3-8. Orders to Police.

(1) The Zuni Tribal Police are hereby expressly authorized and directed to enforce such cease and desist or the Employment Rights Officer may from time to time properly issue related orders as. Such orders do not require a judicial decree or order to render them enforceable. The police shall not be civilly liable for enforcing such orders so long as the Employment Rights Officer signs the order.

(2) The Zuni Tribal Police shall not enforce a removal order of the Employment Rights Officer unless it is accompanied by a judicial decree or order of the Zuni Tribal Court.

§20-3-9. Subcontractors.

The Indian Preference requirements contained in the Zuni Labor Code and all regulations there under shall be binding on all contractors and subcontractors of employers, regardless of tier, and shall be deemed a part of all resulting subcontract specifications. The employer shall.

have the initial and primary responsibility for insuring that all contractors and subcontractors comply with these requirements.

§20-3-10. Religious Freedom.

Employers shall make reasonable accommodation to the religious beliefs of Indian workers in accordance with guidelines to be issued by the Zuni Tribal Employment Rights Officer.

§20-3-11. Employment Rights Officer.

The person appointed to serve as Tribal Employment Rights Officer by the Tribal Council may be designated to serve in that capacity on either a full-time or part-time basis and may simultaneously serve in another capacity for the Tribe. The details of the salary, source of the appointee as Officer shall be set out in a resolution appointing the Officer.

§20-3-12. Coverage.

This chapter shall be binding on all covered employer whether or not they have previously operated within the exterior boundaries of the Zuni Reservation, and whether or not they are doing so at the time of the implementation of this chapter.

CHAPTER 4. FAIR LABOR STANDARDS (Reserved)

END OF TITLE XX. ZUNI LABOR CODE

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TITLE XXI. ZUNI ADULT PROTECTION CODE [April 15, 1996, Ordinance No.55]

CHAPTER 1 GENERAL PROVISIONS

§21-1-1. TITLE.

This code shall be known and cited as the "Zuni Adult Protection Code".

§21-1-2. POLICY.

It is the custom and tradition of the Pueblo of Zuni and is a community value to honor and respect our elders and to protect vulnerable adults on the Zuni Reservation from abuse and neglect. By doing so, it promotes the integrity of the family since vulnerable adults in general and elders in particular are an integral part of the Zuni family. Thus, it is in the interest of and serves the welfare of the Pueblo of Zuni to protect vulnerable adults.

§21-1-3. PURPOSE.

The purpose of this code is to protect vulnerable adults within due jurisdiction of the Zuni Tribe from abuse and neglect as defined in this code. The code shall be liberally interpreted in order to achieve its purpose. The code provides for:

- A. Reporting abuse and neglect to the proper agency;
- B. Receiving reports of and investigating suspected abuse or neglect;
- C. Delivering protection services to vulnerable adults.

§21-1-4. CIVIL NATURE OF CODE.

This code is civil and does not affect any applicable provision of the Zuni Criminal Code unless they are modified specifically by this code.

§21-1-5. DEFINITIONS.

A. GENERAL

The use of the word he, his or him also means she, hers or her. Singular includes plural.

B. SPECIFIC

1. ABUSE is:

(a) intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, or cruel punishment of a vulnerable adult with resulting physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the vulnerable adult such as a spouse, a child, or other relative recognized by tribal law and custom, or a caretaker;

(b) sexual abuse which is any physical contact with a vulnerable adult for sexual gratification of the person making such contact and which is not consented to by the vulnerable adult or for which the consent is obtained by intimidation or fraud;

(c) emotional abuse which is intentional infliction of threats, humiliation, or intimidation; or

(d) exploitation which is the improper use of funds, property, or other resources of a vulnerable adult; or the improper use of the person of the vulnerable adult by a caretaker or by any other person for personal gain or profit; or the failure to use the funds, properly, or other resources of a vulnerable adult to the vulnerable adult's benefit or according to the vulnerable adult's desires.

2. CARETAKER is:

(a) a person who is required by tribal law or custom or state law to, provide services or resources to a vulnerable adult This definition includes a guardian of an incompetent person over the age of 18 appointed pursuant to the provisions of Section 11-6-1, et seq. of the Zuni Domestic Relations Code;

(b) a person who has voluntarily undertaken to provide care or resources to a vulnerable adult;

(c) an institution or agency, which voluntarily provides or is required by tribal law or custom. State or federal law, or tribal-state agreement to provide services or resources to a vulnerable adult. Including the duty to follow up on placements, and any such institution or agency which receives anything of value in return for providing services or resources; or

(d) an employee of any institution or agency specified in paragraph 21-1-5(B)(2)(c) of this code.

3. EMERGENCY is a situation in which a vulnerable adult is immediately at risk of death or injury and is unable to consent to services, which would remove risk.

4. FAMILY is a tribal member who is the vulnerable adult's parent, child, sister, brother, aunt, uncle, grandparent, grandchild, brother-in-law, sister-in-law, niece, nephew, first or second cousin stepparent, godparent or traditionally appointed individual. d remove the risk.

5. GOOD FAITH is an honest belief or purpose and the lack of intent to defraud.

6. INCAPACITY OR INCAPACITATED is the current inability of a person to sufficiently understand, make, and communicate responsible decisions about himself as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or liquor, and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

7. LEAST RESTRICTIVE ALTERNATIVE is an approach, which allows a vulnerable adult's independence and freedom from intrusion consistent with the vulnerable adult's, needs by requiring that the least drastic method of intervention be used when intervention is necessary to protect the vulnerable adult from harm.

8. NEGLECT is the failure of a caretaker to provide for the basic needs of a vulnerable adult by not supplying resources, services, or supervision necessary to maintain the

vulnerable adult's minimum physical and mental health and includes the inability of a vulnerable adult to supply such basic needs for himself. Neglect also is:

- (a) interfering with delivery of necessary services and resources;
- (b) failing to report abuse or neglect of a vulnerable adult by any person required to report abuse or neglect by this code.

9. PROTECTIVE PLACEMENT is placement of a vulnerable adult, in a hospital, nursing home, residential care facility, or transfer of the vulnerable adult from one such institution to another with the vulnerable adult's consent or appropriate legal authority.

10. PROTECTIVE SERVICES are services provided to a vulnerable adult with the vulnerable adult's consent or with appropriate legal authority and include, but are not limited to: social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship and other services consistent with this code. It does not include protective placement.

11. RETALIATION is threatening a reporter of vulnerable adult abuse or the reporter's family in any way; causing bodily harm to the reporter or the reporter's family; causing the reporter or any of the reporter's family to be terminated, suspended from employment or reprimanded by an employer, or damaging the reporter's or the reporter's family's real or personal property in any way.

12. VULNERABLE ADULT is a person subject to the jurisdiction of the Zuni Tribe who is at least 18 years of age and incapacitated or who is at least 60 years of age.

§21-1-6. DUTY TO REPORT ABUSE OR NEGLECT.

A. Duty: Persons who have reasonable cause to suspect that a vulnerable adult has been abused or neglected shall report the abuse or neglect to Zuni Tribal Social Services.

B. Persons Required to Report:

- 1. the vulnerable adult's family or caretaker;
- 2. any tribal employee;
- 3. any tribal elected official;
- 4. any employee of a tribally owned business, even if not managed by the Tribe;
- 5. Indian Health Service personnel;
- 6. Bureau of Indian Affairs personnel;
- 7. any medical or osteopathic doctor, coroner or medical examiner, chiropractor, podiatrist, dentist, religious practitioner, nurse, health aide, Human Services worker, vulnerable adult's service provider, nursing home provider, or any other health and vulnerable adult or human service provider, or its employees that deliver services to tribal vulnerable adults;

8. any person or agency or employee of such agency with a fiduciary duty to the vulnerable adult such as a lawyer, accountant, financial institution, or property manager.

§21-1-7. IMMUNITY FOR REPORTING.

A person who in good faith reports suspected abuse or neglect of a vulnerable adult is immune from any civil or criminal suit based on that person's report.

§21-1-8. FAILURE TO REPORT; CIVIL PENALTIES; DAMAGES.

Any person who is required by this code to report suspected vulnerable adult abuse and fails to do so is subject to a civil penalty of up to \$1,000.00. The Zuni Tribal Court shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination that the person had a mandated duty to report had good reason to suspect vulnerable adult abuse or neglect, and failed to report it as required by this code. Such proceedings will be conducted pursuant to the Zuni Rules of Civil Procedure. Further, the person failing to report is subject to a civil suit brought by or on behalf of the vulnerable adult for damages suffered as a result of the failure to report.

§21-1-9. BAD FAITH REPORT; CIVIL PENALTY; DAMAGES.

Any person who makes a report of suspected vulnerable adult abuse knowing it to be false is subject to a civil penalty of up to \$1,000.00. The Zuni Tribal Court shall assess the penalty only after petition, notice, and opportunity for hearing, and a determination that the reporter made the report knowing it to be false. Such proceedings shall be conducted pursuant to the Zuni Rules of Civil Procedure. Further, the reporter is subject to a civil suit brought by or on behalf of the person named as suspected abusers in the false report for damages suffered as a result of the false report.

§21-1-10. INVESTIGATION.

A. Zuni Tribal Social Services shall receive reports of vulnerable adult abuse or neglect and shall investigate the report within ten days and prepare a written report of the investigation, which shall include the information set out in paragraph B of this section as well as the results of interviews, observations and assessment and other fact finding. The investigator shall conduct in-person interviews with the vulnerable adult, the vulnerable adult's family and caretaker, persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the vulnerable adult's circumstances, and any other person the investigator believes has pertinent information. The existence and content of medical records and other reports of abuse and neglect shall be ascertained. The investigator personally shall assess the vulnerable adult's living conditions including the vulnerable adult's sleeping quarters.

B. The report shall be in writing and shall contain:

1. the vulnerable adult's name, address or location, and telephone number;
2. name, address or location, and telephone number of the person or agency who is suspected of abusing or neglecting the vulnerable adult and that person's relationship to the vulnerable adult, if any;
3. the nature and degree of incapacity of the vulnerable adult;

4. the name, address or location, telephone number of witnesses;
5. the name, address or location, telephone number of the vulnerable adult's caretaker;
6. a description of the acts which are complained of as abusive or neglectful; and
7. any other information that the reporter believes might be helpful in establishing abuse or neglect.

C. The reporter and the investigator taking the report shall sign the report. However, a report may anonymously and it shall be investigated as required by this code.

D. The investigation report shall be filed with the program director of Zuni Tribal Social Services and shall remain on file and not be destroyed for a period of seven years, even if it is determined that there is insufficient evidence to pursue any legal action. However, if the investigative agency determines that the investigation report was made in bad faith, it shall be destroyed immediately after the investigation is completed if the evidence is insufficient to show abuse or neglect.

§21-1-11. INTERFERENCE WITH INVESTIGATION AND RETALIATION PROHIBITED; CIVIL PENALTY.

A. No person shall interfere intentionally with a lawful investigation of suspected vulnerable adult abuse.

B. No person shall retaliate by any means against any person who has made a good faith report of suspected vulnerable adult abuse or who cooperates with an investigation of suspected vulnerable adult abuse.

C. Any person who violated paragraphs A or B of this section shall be enjoined from such activity and shall be subject to a civil penalty of up to \$1,000.00 per personnel policies and procedures. The Zuni Tribal Court shall assess the penalty only after petition, notice, the opportunity to be heard, and a determination that either interference or retaliation as set forth in this section occurred. Such proceeding shall be conducted pursuant to the Zuni Rules of Civil Procedure. Further, notice of such determination shall be provided to the person's tribal employer and appropriate licensing agencies.

§21-1-12. PRIVILEGED COMMUNICATION.

No evidentiary privilege except for the attorney-client, or priest-penitent or community medicine man-patient privilege may be raised as a justifiable defense or reason for failing to report suspected vulnerable adult abuse or neglect or for testifying as required by this code.

§21-1-13. REFERRAL FOR CRIMINAL INVESTIGATION.

A report of suspected vulnerable adult abuse or neglect shall be referred to the Zuni Police Department if the investigation indicates that a violation of the Zuni Criminal Code has been committed. The investigation and other procedures allowed by this code may continue even if an investigation for the purpose of filing criminal charges is undertaken.

§21-1-14. VULNERABLE ADULT PROTECTIVE SERVICES AND VULNERABLE ADULT PROTECTIVE PLACEMENT; OTHER SERVICES; EVALUATION PROCEDURES; DUTY TO PAY.

A. Protective services or protective placement are provided either on a voluntary or involuntary basis. Such services or placement may be provided on a voluntary basis by the Zuni Tribal Social Services or other designated agencies when requested by any abused or neglected vulnerable adult and the vulnerable adult is found by Zuni Tribal Social Services to be in need of such services or placement. The Zuni Tribal Social Services or other designated agencies shall provide such services or placement on an involuntary basis only if the Zuni Tribal Court determines they are necessary. Such services or placement may be provided on an emergency basis or, if necessary, on a permanent basis through a guardian appointed pursuant to tribal law and shall be provided in a manner least restrictive of the vulnerable adult's liberty and right consistent with the vulnerable adult's welfare and needs. The Zuni Tribal Court's determination of the degree of incapacity, if any, as well as whether vulnerable adult abuse or neglect has occurred is the standard Zuni Tribal Social Services shall use to develop a plan for the delivery of vulnerable adult protective services.

B. Voluntary protective services or protective placement are provided subject to available appropriations and resources and only as determined necessary by the Zuni Tribal Social Services. If the vulnerable adult's consent to such services or placement is withdrawn, they shall cease. Such protective services or protective placement shall be provided for a period of not more than 30 days at a time. At the end of each period, Zuni Tribal Social Services shall reassess the vulnerable adult's need before agreeing to continue providing services and placement. Voluntary placement shall not be continued without a court order permitting continued voluntary placement after the vulnerable adult has been in such placement for 30 days.

C. Involuntary protective services or protective placement shall be provided to any vulnerable adult who is incapacitated or who is abused or neglected and incapacitated and only upon tribal court order as required by this code.

D. Services as determined necessary by the Zuni Tribal Social services may be delivered to the vulnerable adult's family or caretaker in order to protect the vulnerable adult.

E. Zuni Tribal Social Services shall establish a process for conducting a comprehensive, physical, mental and social assessment of a vulnerable adult when a petition for a protection order has been filed.

F. The vulnerable adult and, where appropriate, the vulnerable adult's family and caretaker shall be informed by Zuni Tribal Social Services of rights as allowed under this code and other tribal law, including the right to refuse voluntary services and placement and the right to have the tribal court determine the necessity of involuntary services and placement.

G. In the Case of voluntary services or placement, the vulnerable adult and, were appropriate, the vulnerable adult's family and caretaker, if able to do so, shall pay for all or pan of the costs of services or placement provided to the vulnerable adult.

§21-1-15. EMERGENCY.

A. The Zuni Tribal Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis based upon a petition supported by clear and convincing evidence that a vulnerable adult:

1. is at risk of immediate physical harm;
2. are incapacitated and cannot consent to protective services;
3. no one is authorized by law or court order to give consent on an emergency basis; and
4. an emergency exist.

B. The emergency protection order shall:

1. set out the specific emergency services to be provided to the vulnerable adult to remove the conditions creating the emergency;
2. provide only those services, which will remove the emergency;
3. allow protective placement only if the evidence shows that it is necessary;
4. designate the agency required to implement the order;
5. be issued for a maximum of 72 hours and may be renewed only once for a maximum of 72 hours provided the evidence shows that the emergency is continuing.

C. The Zuni Tribal Court may authorize forcible entry by law enforcement to enforce the emergency protection order after it has been shown that attempts to gain voluntary access to the vulnerable adult have failed.

D. The petition for an emergency protection order shall contain the name, address or location, and interest of the petitioner; the name, address or location, and condition of the vulnerable adult; the nature of the emergency; the nature of the vulnerable adult's incapacity; the proposed protective services, and where applicable, protective placement; the attempts, if any, to secure the vulnerable adult's consent to services; any other facts the petitioner believes will assist the court.

E. The emergency protection order shall be issued only after notice, accompanied by a copy of the petition, has been given to the vulnerable adult, his family, and caretaker at least 24 hours before a hearing on the petition is scheduled and the Zuni Tribal Court has had the opportunity to hear all parties and the evidence. The Tribal Court may waive the waiting period if the emergency is such that the vulnerable adult will suffer immediate and irreparable harm.

F. The tribal court shall hold a hearing on a petition to provide protective services or placement to a vulnerable adult within 48 hours after an emergency protection order is issued.

G. An emergency protection order can be set aside by the tribal court upon a petition of any party showing good cause.

H. If there is good cause to believe that an emergency exists and that a vulnerable adult is at risk of immediate and irreparable physical harm and, based on personal observation, a social service worker or law enforcement officer believes that the vulnerable adult will be irreparably harmed during the time an emergency protection order is being secured, the social service worker or law enforcement officer shall immediately protect the vulnerable adult, including where necessary, transporting the vulnerable adult for medical treatment or to and

appropriate relative or facility. Immediately after the vulnerable adult is protected, a petition for an emergency protection order shall be filed and the procedures set out in this section followed.

I. Any person who acts in good faith pursuant to this section is immune from any civil or criminal suit based on that person's actions.

§21-1-16. PROCEDURES FOR DETERMINING INCAPACITY, ABUSE OR NEGLECT.

The Zuni Tribal Court shall determine whether a vulnerable adult is incapacitated and the degree of incapacity, and where necessary, whether vulnerable adult abuse or neglect has occurred. The determination shall be made only after petition, notice, hearing and proof that are clear and convincing.

§21-1-17. CONFIDENTIALITY OF REPORTER, RECORDS, HEARINGS; PENALTY FOR NOT COMPLYING WITH CONFIDENTIALITY.

A. The name of a reporter who reports abuse or neglect as required by this code is confidential and shall not be released to any person unless the reporter consents to the release or release is ordered by the Tribal Court. The Tribal Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the need to protect the vulnerable adult is found to be greater than the reporter's right to confidentiality. The report's name shall be released only to the extent determined necessary to protect the vulnerable adult.

B. Records of an investigation of vulnerable adult abuse or of a tribal court hearing regarding vulnerable adult abuse are confidential. Such records shall be open only to the vulnerable adult and the vulnerable adult's family and caretaker unless the family or caretaker is the suspected abuser, employees of Zuni Tribal Social Services, law enforcement officers, tribal court officials, coroner or medical examiner who has reason to believe that a vulnerable adult died as the result of abuse or neglect, and any other person who the tribal court believes has reasonable cause to have access to such record.

C. A proceeding held pursuant to this code shall be closed and confidential. Persons who may attend are the vulnerable adult, the vulnerable adult's family and caretaker, the person or representative of an institution or agency accused of vulnerable adult abuse, the representative of Zuni Tribal Social Services, necessary tribal court officials and attorneys for the parties. Other persons may appear only to testify. No one attending or testifying at such proceeding shall reveal information about the proceeding unless ordered to do so by tribal court order.

D. Any person who violates any portion of this section shall be subject to a civil penalty of up to \$1,000.00 per occurrence and, if a tribal employee, to appropriate disciplinary action as allowed by tribal personnel policies and procedures. The penalty shall be assessed by the tribal court after petition, notice, opportunity to be heard and a determination that a violation occurred.

§21-1-18. VULNERABLE ADULT PROTECTION ORDER; TIME LIMITS.

A. If the Zuni Tribal Court determines that a vulnerable adult is incapacitated or incapacitated and abused or neglected, the tribal court shall issue a vulnerable adult protection order, which provides appropriate protection for the vulnerable adult. Such protection may include, but is not limited to, the following:

1. removing the vulnerable adult from the place where the abuse or neglect has taken or is taking place for no longer than 30 days;

2. removing the person who has abused or neglected a vulnerable adult from the vulnerable adult's home.

3. restraining the person who has abused or neglected a vulnerable adult from continuing such acts;

4. requiring a vulnerable adult's family or caretaker or any other person with a fiduciary duty to the vulnerable adult to account for the vulnerable adult's funds and property;

5. requiring any person who has abused or neglected a vulnerable adult to pay restitution to the vulnerable adult for damages resulting from that person's wrongdoing;

6. appointing a guardian ad litem for the vulnerable adult;

7. recommending that a representative payee be named; and

8. ordering Zuni Tribal Social Services to prepare a plan for and deliver vulnerable adult protection services which provide the least restrictive alternatives for services, care, treatment, or placement consistent with the vulnerable adult's needs.

9. ordering the person or institution guilty of vulnerable adult abuse or neglect to pay a civil penalty of up to \$2,000.00.

B. No protection order shall be issued until three days after the petition is served on all parties, except for an emergency protection order.

C. A vulnerable adult protection order shall be issued for a period not to exceed 30 days.

D. The order may be extended as many times as necessary to protect the vulnerable adult, but only after petition is filed by the party seeking an extension and notice, opportunity for hearing, and a determination based on clear and convincing proof that such an extension is necessary for the protection of the vulnerable adult. Each extension shall be for a period not to exceed 90 days.

§21-1-19. PETITION; HEARING.

A. The tribal prosecutor shall file petitions and present facts on behalf of the tribe for legal proceedings authorized or required by this code.

B. A hearing on a petition authorized or required by this code shall be conducted with the purpose of protecting the vulnerable adult only where necessary and only to the extent shown by the facts and using the least restrictive alternatives. All rights as set out specifically in this code and in the Indian Civil Rights Act shall be enforced strictly during proceedings. No hearing shall be held unless notice has been given to the vulnerable adult and other interested parties, including the vulnerable adult's family and caretaker. The vulnerable adult and all other interested parties shall have the right and opportunity to be heard fully and to present evidence. The Zuni Tribal Court shall issue a written statement of its findings in support of any order allowed by this code.

§21-1-20. REGULATIONS.

The Zuni Tribal Social Services shall adopt and issue regulations establishing criteria and procedures, which comply with the policy and requirements of this code.

**END OF TITLE XXI. ZUNI ADULT PROTECTION CODE
[APRIL 15, 1996, ORDINANCE NO. 55]**

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TITLE XXII. ZUNI UTILITY DEPARTMENT [Enacted August 30, 1988, Resolution No.M70-88-L117]

CHAPTER 1. GENERAL PROVISIONS

§22-1-1. Purpose.

The purpose of this ordinance is to establish rules and regulations for the provision of water, sewer, and refuse service to homes, business establishments and non-profit institutions situated within the Zuni Reservation.

§22-1-2. Creation of Zuni Utility Service Department and Board.

The Zuni Tribal Council ("Council") hereby creates the Zuni Utility Service Department ("Department") and the Zuni Utility Service Board ("Board"). The Department shall have all powers and duties specifically set forth herein, as delegated from the council to the Board.

§22-1-3. Additional Powers of Department and Board.

In addition to the specific powers granted here in, the Department and Board shall have all powers necessary for the performance of the duties delegated in this Ordinance.

§22-1-4. Liability.

Nothing in this Ordinance shall be read as creating any civil liability on the part of the Department, the Board, the Council, or the Zuni Tribe for any action or inaction by the Department, Board, Council, or Tribe in respect to the provision of Utility Service.

CHAPTER 2. UTILITY SERVICE CONNECTIONS.

§22-2-1. Application for Service.

Utility service connections will be made upon application in writing by the prospective customer to the Board. Application forms will be available through the Department's main office. No service connection will be made until the applicant has made arrangements, satisfactory to the Department manager and to the Board, for payment of all costs of such connection. Any person denied a service connection may appeal to the Board. The decision of the Board is final.

§22-2-2. Additional Service Limited Capacity.

New or additional service will be limited to available unreserved capacity in production, transmission and distribution facilities, and commensurate with available water rights.

§22-2-3. Costs.

Each Customer shall pay a one-time connection fee of \$50.00, plus a \$10.00 membership fee, in addition to the actual cost of labor and materials necessary to make the service connection. Payment must be made prior to the connection.

§22-2-4. Tapping of Water and Sewer Lines.

Tapping of water and sewer lines will be done only by employees of the Department under the supervision of the Department Manager or his authorized representative. Installation shall conform to the standards for plumbing established in this ordinance.

§22-2-5. Water Meters.

The Department will require the installation of a meter for the measurement of the flow of water to any new residential home at customers cost. The Department may also require the installation of meters for the measurement of the flow of water to existing customers.

§22-2-6. Inspection of Piping.

The conditions of piping and character of installation on the Customer's premises shall be subject to inspection and approval by the Department and any other agency having jurisdiction.

If such piping and/or installation is found to be faulty, the Department will refuse to provide service until such faulty installation has been corrected. The Department does not, however, assume responsibility for such inspections and shall not be liable for failure of such piping or installations.

§22-2-7. Access of Piping.

Each customer for the privilege of receiving water or sewer service, grants to the Department the right of access and use rights to all pipes and meters located up to five (5) feet of any dwelling unit or building.

CHAPTER 3. UTILITY CHARGE.

§22-3-1. Authority of the Board.

The Board is authorized to establish from time to time appropriate rates and charges for the provision of water, sewer and refuse services, after public hearing. Until changed by the Board, the rates set forth in §22-3-2 through §22-3-10 shall apply.

§22-3-2. Metered Residential Water Rate.

All metered residential water customers will be charged \$.95 per/1000 gallons of water plus a monthly water meter reading charge of \$2.00.

§22-3-3. Unmetered Residential Water Rate.

All unmetered residential customers will be charged \$10.00 per month for the use of water.

§22-3-4. Metered Business Water Rate.

All metered business customers will be charged \$.95 per/1000 gallons of water plus a monthly water meter reading fee of \$3.00.

§22-3-5. Unmetered Business Rate.

All unmetered business customers will be charged \$50.00 per month for the use of water.

§22-3-6. Metered Non-profit Institution Water Rate.

All metered non-profit customers will be charged \$.95 per/1000 gallons plus a monthly water meter reading charge of \$3.00.

§22-3-7. Unmetered Non-profit Institution Water Rate.

All unmetered non-profit customers will be charged \$10.00 per month for the use of water.

§22-3-8. Water Rates for Contractors and Other Individuals Needing Potable Water for Special Projects.

All contractors and individuals, Zuni and non-Zuni, will be charged \$2.00 per 1000 gallons of water, plus a metering charge of \$50.00 for potable water for special projects. All special requests for such service will be directed to the Department Manager who will ensure the accurate measurement of the quantity of water supplied to the contractor or individuals.

§22-3-9. Refuse Collection Rates.

- A. \$100.00 per month for each business.
- B. \$60.00 per month for each non-profit institution.

§22-3-10. Sewer Rates.

Not addressed.

CHAPTER 4. DISPUTED BILLS.

§22-4-1. Disputed Bills.

The Department will promptly investigate any questions as to the accuracy of metering or of bills for service rendered, and if the bill is in error, the Department will submit a corrected bill to customer as promptly as circumstances permit or give credit on a subsequent bill rendered to the customer. If the bill is correct, the Department will use its best efforts to explain the billing to the customer and to respond to the customer's concerns. A customer who is not satisfied with the Department's disposition of the dispute, may appeal to the Board. The Board's decision is final.

CHAPTER 5. STANDARDS FOR PLUMBING.

§22-5-1. Adoptions of Standards.

All pipes fittings and other plumbing fixtures and materials purchased by the Department or supplied by customers must comply with uniform plumbing codes, as well as with specifications endorsed by the American Waterworks Association. It shall be the responsibility of the Department to inspect all projects to ensure compliance with these standards.

CHAPTER 6. CUSTOMER RESPONSIBILITIES.

§22-6-1. Customer Responsibility for Property of the Department.

The customer shall use due diligence to protect the property of the Department installed on the premises of the customer or on premises under his/her control.

§22-6-2. Customer Responsibility for Customer's Equipment.

Customers are required to keep their faucets, water lines and other waste apparatus in good condition at their own expense. The Department does not have responsibility for maintenance of customer's equipment.

§22-6-3. Misuse of Facilities.

Utility service will not be furnished where there is evidence of defective or substandard plumbing facilities and apparatus or where the customer has failed to act diligently to protect the property of the Department on his/her premises. Waste of water or misuse of sewer facilities will result in discontinuation of utility service.

§22-6-4. Inspection by Department Employees.

Employees of the Department shall have the right at reasonable hours and upon reasonable notice, to come upon the premises receiving water or sewer service to conduct periodic inspections to ensure that new construction and renovations comply with standards set forth in this ordinance. All piping and plumbing installations made by the customer or under responsibility of the customer shall conform with the plumbing Code of the State of New Mexico and/or other applicable codes and regulations.

§22-6-5. Payment of Utility Bills.

It is the responsibility of each customer to pay on or before the due date each bill for utility service. Prompt payment is essential to enable the Department to deliver adequate utility services to the community. Utility service is subject to disconnection for nonpayment of bills as provided in Chapter of this Ordinance.

§22-6-6. Customer's Mailing Address and Telephone Number.

It is the responsibility of each customer to provide to the Department accurate information pertaining to his/her mailing address and telephone number. The Department will hold such information confidential and will use it only if necessary to carry out the responsibilities of the Department under this Ordinance. All provisions of the Privacy Act will apply to the Department's handling of information relative to customers.

§22-6-7. Customers Moving from Premises.

Customers who intend to move from the premises or discontinue utility service shall give the Department two (2) weeks' notice. Customers are liable for all utility service used on the premises until such notice has been given and the Department has made a final meter reading of the customer's usage.

§22-6-8. Naming of Successor Customer.

It a residential customer dies, or moves from the premises, it is the responsibility of the remaining members of the household, If any, to identify a new head of household so that billing notice may be directed to that person. Name change on water membership require a \$10.00 fee.

§22-6-9. Government Agencies with Tenant Employees (needs to be discussed and rewritten)

CHAPTER 7. ZUNI UTILITY SERVICE DEPARTMENT RESPONSIBILITIES.

§22-7-1. Zuni Utility Service Department Responsibilities.

The Department, under the direction of the Board, is responsible for maintaining water, sewer and refuse collection services. It is the Department's further responsibilities, acting under the direction of the Board, to establish rates for utility service that generate sufficient revenue to enable the Department to provide adequate utility services to customers.

§22-7-2. Water System.

The Department will design, install, own, operate and maintain the complete water system up to the point of delivery, including meter setting and meter. The Department's responsibility for maintenance of the water system terminates at a point five (5) feet from the exterior wall of each residence or other premises receiving water service, The Department is not responsible for work beyond this point.

§22-7-3. Sewer System.

The Department will design, install, own, operate and maintain sewer lift stations, sewer lagoons, and all related mechanical and electrical systems, including sewer lines to a point five (5) feet from the exterior wall of each residence or other premises receiving sewer service. The Department is not responsible for work beyond this point.

§22-7-4. Refuse Collection System.

The Department will provide staff, equipment and motor vehicles necessary to collect refuse once a week for individuals households, businesses and non-profit institutions located on the Zuni Reservation.

CHAPTER 8. REQUIREMENTS FOR NEW CONSTRUCTION.

§22-8-1. Plans and Specifications.

A complete set of plans and specifications for any new construction or renovation shall be submitted to and approved by the Board and the Department prior to such construction or renovation. Copies of construction plans will also be submitted to the Council, as well as to the respective agency offices of the BIA and the IHS for their review and comment.

§22-8-2. Water Metering.

All homes, businesses and public buildings constructed after January 1, 1989 are required to have water meters installed at customers cost. Self-installed meters must comply with

plumbing standards and specifications set forth in this ordinance and must be inspected by the Department prior to installation.

§22-8-3. Trench Requirements.

All water trench excavation shall have a minimum cover of three and one-half (3½) feet from the top of the pipe to the surface.

§22-8-4. Backfilling Requirement.

Backfilling around pipe shall be loose, moist free of rock and debris for six (6) inches above the top of the pipe. Materials for completing the backfill shall be moist-free earth, with no rocks larger than four (4) inches in diameter.

§22-8-5. Inspection Requirement.

All construction contractors and developers engaged in new construction or renovation must contact the manager of the Department after laying water or sewer pipe and before covering it. All pipe shall be pressure tested, chlorinated and inspected for leakage of connections. Testing will be accomplished jointly by the contractor and the manager. All test-related expenses will be borne by the contractor.

CHAPTER 9. DISCONNECTION OF SERVICES.

§22-9.1. Procedures for Disconnections of Water Service.

A. Any customer desiring to have service disconnected shall give notice in writing to the Department at its office.

B. The Department reserves the right to interrupt service, without notice, for a reasonable period for repairs to its property or equipment.

C. The Department may discontinue utility service to a customer without prior notice.

1. In the event of a condition determined by the Department to be hazardous.

2. In the event of customer use of equipment in such manner as to adversely affect the Department's equipment or the Department's service to others.

3. In the event of a customer tampering with, damaging or destroying the equipment furnished and owned by the Department.

4. In the event of unauthorized use of service.

D. After three (3) days' prior notice, the Department may discontinue service to a customer for:

1. Refusal to grant access at reasonable times to equipment installed on the premises of the customer for the purpose of inspection, meter reading, maintenance or replacement.

2. Failure to furnish such service, equipment, permits, certificates and/or rights- of-way as shall have been specified by the Department as a condition to obtaining service, or In the event such equipment or permission is withdrawn or terminated.

3. Violation or noncompliance with the provisions of this ordinance.

4. Failure of the customer to fulfill contractual obligations for utility service other than payment obligations.

5. Failure of the customer to comply with rationing or conservation orders issued by the Department.

6. Waste of water by the customer.

7. Failure to comply with the terms and conditions of a settlement agreement.

E. The Department may also discontinue utility service to a customer for nonpayment of a delinquent account, whether for water, sewer, or refuse service. For example, water service may be discontinued for nonpayment of sewer or refuse charges. Disconnection for nonpayment of a delinquent account shall take place only after two (2) sets of written notice have been sent by the Department to the customer as provided herein,

1. The first notice shall be sent to the customer fifteen (15) days after the account becomes delinquent. All utility bills are due on the date rendered and are delinquent twenty (20) days thereafter.

2. A second, and final, notice of delinquent will be sent thirty (30) days after the bill becomes delinquent. Service will be disconnected five (5) working days after the date of the second notice, unless payment is received at the office of the Department before the disconnection date.

G. All notices shall be delivered to the affected customer In person or by depositing a copy to the notice in the U.S. Mail, postage prepaid, addressed to the customer at the address supplied by the customer to the Department. The notice shall contain 8 statement of the amount owed and the date by which the customer must pay the amount due, and a statement of the cost of reconnection.

§22-9-2. Reconnection Charge.

When utility service has been discontinued for reasons other than customer request, it will not be restored until the cause of the disconnection has been eliminated to the satisfaction of the Department. A reconnection fee of \$15.00 will be charged to any customer whose utility service is involuntarily disconnected. This fee, and all outstanding utility charges must be paid prior to reconnection of services.

§22-9-3. Interest on Delinquent Accounts.

Utility bills are due when rendered and become delinquent twenty (20) days thereafter. Accounts that are delinquent for more than fifteen (15) days shall bear interest at the rate of one and one-half (1½) per month until paid.

§22-9-4. Cost of Emergency Disconnection and Reconnection.

Then the Department determines that an emergency disconnection was necessitated by action or omissions on the part of the customer, the Department, acting in concert with the Board, may assess a fee against the customer for the cost of the disconnection, for the cost of any necessary repairs, and for the cost of reconnection. A customer who believes that the Department's action is improper may appeal the matter for consideration by the Board.

CHAPTER 10. SUITS FOR COLLECTION OF DELINQUENT ACCOUNTS.

§22-10-1. Civil Suits in Tribal Court.

The Board is authorized to bring suit in Zuni Tribal Court under procedures set forth in the Zuni Rules of Civil Procedures to collect all sums due the Department from utility customers. This remedy is not exclusive but is in addition to any other civil remedy available through the Zuni Tribal Court, and the Department's right to disconnect service for nonpayment.

CHAPTER 11. MANDATORY SEWERAGE CONNECTION

§22-11-1. Required Disposal of Sewerage.

Every person, business, and non-profit institution situated within the Zuni Reservation that uses water supplied from the Zuni Tribal Water System is required to be connected to the tribal sewer system for disposal of all waste effluent by means of a Sewer Service connection. Each new home, business or Institution shall have installed their own separate sewer service line and tapped directly into any existing sewer mains. Every person, business establishment and non-profit institution situated within the Zuni Reservation and not connected to the tribal sewer system must have installed and maintained, at their own expense, a septic tank that conforms to the standards and specifications prescribed by the United States Public Health Service.

§22-11-2. Enforcement.

The Department is authorized to bring an action in Zuni Tribal Court for abatement of a public nuisance against any person, business, or public Institution that does not comply with the provisions of §22-12-1.

CHAPTER 12. CRIMINAL PROVISION: THEFT OF WATER.

§22-12-1. Theft of Water.

Any person who intentionally opens a cutoff valve without authority or who tampers with a meter or who otherwise takes water of the Tribal Water System without authority to do so is guilty of theft of water. Theft of water is a Class C offense punishable by imprisonment not to exceed forty-five (45) days and a fine of up to \$100.00.

CHAPTER 13. ADDITIONAL SERVICE PROVISIONS.

§22-13-1. General.

The Board reserves the right to refuse utility services to any person, business, or non-profit institution for any appropriate cause including, but not limited to, nonpayment of utility bills.

§22-13-2. Delinquent Accounts.

No work orders requested by an individuals, business, or nonprofit Institution will be honored unless the utility accounts of the individuals or entity are current.

§22-13-[3.] Right-of-Way for Connections.

Customers who request water or sewer connections are responsible for obtaining easements, right- of way and other necessary approvals from affected property owners and governmental agencies and must do so and present proof thereof to the Department before any connection work will be performed.

(Annotations: Special Note: Section identified as "22-13-2 Right-of-Way for Connections" is incorrectly numbered. Corrected Section number to 22-13-3. above).

CHAPTER 14. POWER OF EMINENT DOMAIN.

§22-14-1. Power of Eminent Domain.

The power of eminent domain may be exercised by the Council to resolve disputes which arises when one individual, usually a neighbor, denies permission to another individual for easement of right-of way so that a water or sewer line can be installed.

§22-14-[2.] Dispute Resolution.

Any individual or organizational entity not granted an easement or right-of-way by another individual or organizational shall make the situation known to the Board by contacting the Department Manager. The Manager and the affected individual shall make a formal presentation to the Board at its regularly scheduled monthly meeting. If the Board cannot settle the Board will schedule a hearing involving all parties before the council for final settlement.

(Annotations: Special Note: Section identified as "22-14-1. Dispute Resolution" is incorrectly numbered. Corrected Section number to 22-14-2 above).

CHAPTER 15. AUTHORITY TO MAKE PERIODIC AMENDMENTS TO THE ZUNI UTILITY SERVICE DEPARTMENT ORDINANCE.

§22-15-1. Periodic Amendments.

The council, upon the recommendation of the Board, may amend the Ordinance as deemed appropriate from time to time to enable the Board and the Department to provide adequate utility services at just and reasonable rates.

**END OF TITLE XXII. ZUNI UTILITY DEPARTMENT
[ENACTED AUGUST 30, 1988, RESOLUTION NO. M70-88-L117]**

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TITLE XXIII. ZUNI SEX OFFENDER REGISTRATION CODE [May 20, 2014, Resolution M70-2014-Q051]

CHAPTER 1: GENERAL MATTERS

§23-1-1. Title

This Code shall be known as the Sex Offender Registration Code.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014; Special Note: there have been versions of the Sex Offender Registration Code referenced as Title-XXII (22), but there is already an existing Title-XXII (Zuni Utility Service Department Code), which was enacted in 1988 - therefore this Code is being assigned as Title-XXIII (23), and the corresponding sections (i.e. 23-1-1, etc.) so-reflect that assignment.)

§23-1-2. Purpose

1. The intent of this code is to implement the registration of Sex Offenders residing, or planning to enter the Pueblo of Zuni jurisdiction for a period of time that would require their registration.

2. To promote public safety through the Sex Offender accountability, public awareness, and nationwide networking through Sex Offender Registration and Notification Act (SORNA) and shall be interpreted liberally to comply with the terms and conditions of that Act as presently written or hereafter amended.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014.)

§23-1-3. Creation of Registries

A. Sex Offender Registry. There is hereby established a sex offender registry, which the Zuni Police Department shall maintain and operate pursuant to the provisions of this Code, as amended.

B. Public Sex Offender Registry Website. There is hereby established a public sex offender registry website, which the Zuni Police Department shall maintain and operate pursuant to the provisions of this Code, as amended.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014.)

CHAPTER 2: TERMINOLOGY, COVERED OFFENSES AND TIERS

§23-2-1. Definitions

A. "**Absconded**" means to leave secretly or without notice or to take any action to avoid the enforcement of this Code.

B. "**Convicted**" means an adult sex offender is "convicted" for the purposes of this chapter if the sex offender has been subject to penal consequences based on the conviction, however it may be styled.

C. A **Juvenile offender** is "convicted" for the purposes of this chapter if the juvenile offender is either:

1. Prosecuted and found guilty as an adult for a sex offense; or
 2. Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual assault (as described in either (a) or (b) of section 2241 of title 18, United States [Code], or was an attempt or conspiracy to commit an offense; and
 - a. If found guilty will be required to register as a sex offender, but their registration will only be accessible by Law Enforcement and not the general public; and
 - b. Registration will only be required until jurisdiction of the children's court expires and all other provisions relating to confidentiality and destruction of records shall apply in accordance with section [9-2-5] Records Maintenance and Protection of the Zuni Tribal Children's Code
- D. **Dru Sjodin National Sex Offender Public Website** (NSOPW) means the public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16920.
- E. **Foreign Conviction** means a foreign conviction is one obtained outside the United States.
- F. **Criminal Sexual Conduct** means any Sexual Act or Sexual Contact which is prohibited by law.
- G. **"Employee"** means, but not limited to, an individual who is self-employed or works for any other entity, regardless of compensation, including but not limited to volunteers, interns, externs, and apprentices of a tribal agency or organization are included within the definition of employee for registration purposes.
- H. **Immediate and immediately** means within three (3) business days.
- I. **Imprisonment** means incarceration pursuant to a conviction regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example confinement in a state "prison" as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal "jail". Persons under "house arrest" following conviction of a covered sex offense are required to register pursuant to the provisions of this Chapter during their period of "house arrest."
- J. **"Jurisdiction"** means the reservation boundaries as consistent with the constitution of the Pueblo of Zuni and its laws.
- K. **"Minor"** means an individual who has not attained the age of 18 years.
- L. **"Resides"** means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.
- M. **"Sex Offense"** means those offenses contained in 42 U.S.C. § 16911(5) those offenses enumerated in Section 23-2-2. In the event of a conflict between the terms of SORNA section 111(5) and Section 23-2-2, the terms of SORNA section 111(5) will prevail or any offense designated as a sex offense under state or tribal law.

1. An offense involving consensual sexual conduct is not a sex offense for the purposes of this Chapter if the victim was an adult, unless the assault was under the custodial authority if the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

N. **"Sex Offender"** means a person convicted of a sex offense is a "Sex Offender"

O. **"Zuni Sex Offender Registry"** means the registry of sex offenders and notifications program, maintained by the Zuni Police Department.

P. **"Sexual Act"** means:

a. contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

b. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

c. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

d. the intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Q. **"Sexual Contact"** means the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

R. **"Student"** means a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.

S. **"SORNA"** means Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248).

T. **"SMART Office"** means the office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States through the Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. § 16945.

U. **"Tier 1 Sex Offender"** or a "sex offender" designated as "tier 1", means a person who has been convicted of a "tier 1" sex offense as defined in § 23-2-3(A).

V. **"Tier 2 Sex Offender"** or a "sex offender" designated as "tier 2", means a person who has been either convicted of a "tier 2" sex offense as defined in § 23-2-3(B), or who is subject to the recidivist provisions of [23-2-3(B)(1)].

W. **"Tier 3 Sex Offender"** or a "sex offender" designated as "tier 3" means a person who has been either convicted of a "tier 3" sex offense as defined in § 23-2-3(C), or who is subject to the recidivist provisions of § 23-2-3(C)(1).

X. **"Tribe"** means the Zuni Tribe.

Y. **"Zuni Police Department"** or **"Police Department"** means the police department of the Zuni Tribe, or other agency duly designated by the Tribe.

Z. **"Zuni Reservation"** or **"Reservation"** means all lands within the exterior boundaries of the Zuni Indian Reservation.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014; Special Note: the version from which this was transcribed used the word "Chapter" at Subsection-C(2), which has been modified to "[Code]" above; Subsection-C(2)(b) references Section 9-1-6 of the Children's Code, but that would be the 2006 Version and the Current (2021) Version has moved and made substantial changes to the retention of Children's Court records and is found at Section 9-2-5 (2021 Version), which has been modified; Subsection-M (definition of "Sex Offense") references Section 20-2-2, but obviously means to reference Section 23-2-2 (Covered Offenses) of *this* Version; Subsection-U (definition of "Tier 1") references Section 20-2-3(A), but obviously means to reference Section 23-2-3(A) of *this* Version; Subsection-V (definition of "Tier 2") references Section 20-2-3(B), but obviously means to reference Section 23-2-3(B) of *this* Version; Subsection-V (definition of "Tier2") also references the recidivist provisions of 3.02(B)(1), but obviously means to reference Section 23-2-3(B)(1) of *this* Version, which has been modified; Subsection-W (definition of "Tier 3") references Section 20-2-3(C) and 20-2-3(C)(1), but obviously means to reference Sections 23-2-3(C) and 23-2-3(C)(1), respectively, of *this* Version.)

§23-2-2. Covered Offenses

A. Individuals Covered by this Chapter. Individuals who reside within the exterior boundaries of the Pueblo of Zuni or otherwise reside on property owned by the Pueblo in fee or trust regardless of location, or are employed within the exterior boundaries of the reservation or on property owned the Pueblo in fee or trust regardless of location, or who attend school within the exterior boundaries of the reservation or on property owned by the Pueblo in fee or trust regardless of location, that have been convicted of any of the following offenses, or convicted of an attempt or conspiracy to commit any of the following offenses are subject to the requirements of this Chapter.

These currently are the Tribes

ZTC 4-4-16 Rape
ZTC 4-4-17 Unlawful Sexual Intercourse
ZTC 4-4-18 Deviated Sexual Intercourse
ZTC 4-4-19 Sexual Assault
ZTC 4-4-20 Indecent Exposure
ZTC 4-4-22 Provisions Applicable to Sexual Offenses

B. Attempts and Conspiracies. Any attempt or conspiracy to commit any sex offense.

C. Federal Offenses. A conviction for any of the following, and any other offense here after included within SORNA:

1. 18 U.S.C. § 1591 (sex trafficking of children);
2. 18 U.S.C. § 1801 (video voyeurism of a minor);

3. 18 U.S.C. § 2241 (aggravated sexual abuse);
4. 18 U.S.C. § 2242 (sexual abuse);
5. 18 U.S.C. § 2243 (sexual abuse of a minor or ward);
6. 18 U.S.C. § 2244 (abusive sexual contact);
7. 18 U.S.C. § 2245 (offenses resulting in death);
8. 18 U.S.C. § 2251 (sexual exploitation of children);
9. 18 U.S.C. § 2251A (selling or buying of children);
10. 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);
11. 18 U.S.C. § 2252A (material containing child pornography);
12. 18 U.S.C. § 2252B (misleading domain names on the internet);
13. 18 U.S.C. § 2252C (misleading words or digital images on the internet);
14. 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States);
15. 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);
16. 18 U.S.C. § 2422 (coercion and enticement of a minor for illegal sexual activity);
17. 18 U.S.C. § 2423 (transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, engaging in illicit sexual contact in foreign places);
18. 18 U.S.C. § 2423(d) (Arranging, Inducing, Procuring, or Facilitating the travel in Interstate Commerce of a Minor for the purpose of Engaging in Illicit Conduct for Financial Gain)
19. 18 U.S.C. § 2424 (failure to file factual statement about an alien individual); and
20. 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual misconduct).

D. Foreign Offenses. Any conviction for a sex offense involving any conduct listed in Section 23-2-2(F) which was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, and any foreign country where the United States State Department, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary generally (or vigorously) enforced the right to a fair trial in that country during the year in which the conviction occurred.

E. Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (10 U.S.C. § 951 note).

F. Juvenile Offenses or Adjudications. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. § 2241) and committed by a minor who is 14 years of age or older at the time of the offense. This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in a sexual act with another by rendering unconscious or involuntary drugging the victim.

G. Tribal, State and Local Offenses. Any offense committed in any jurisdiction, including the Zuni Tribe, that involves:

1. Any type or degree of genital, oral, or anal penetration;
2. Any sexual touching of or contact with a person's body, either directly or through the clothing;
3. Kidnapping of a minor;
4. False imprisonment of a minor;
5. Solicitation to engage in a minor in sexual conduct, understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct;
6. Use of a minor in a sexual performance;
7. Solicitation of a minor to practice prostitution;
8. Video voyeurism of a minor as described in 18 U.S.C. § 1801;
9. Possession, production, or distribution of child pornography;
10. Criminal sexual conduct (sexual offenses whose elements involve physical contact with the victim) involving a minor or the use of the internet to facilitate or attempt such conduct.
 - a. This includes offenses whose elements involve the use of other persons in prostitution, such as provisions defining crimes of "pandering", "procuring", or "pimping" in cases where the victim was below 18 at the time of the offense;
11. Any conduct that by its nature is a sex offense against a minor; and
12. Any offense similar to those outlined in:
 - a. 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion);
 - b. 18 U.S.C. § 1801 (video voyeurism of a minor);
 - c. 18 U.S.C. § 2241 (aggravated sexual abuse);
 - d. 18 U.S.C. § 2242 (sexual abuse);

- e. 18 U.S.C. § 2244 (abusive sexual contact);
- f. 18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution);
- g. 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct).

13. Any offense in the Zuni Criminal Code, Title-4.

H. **Except as limited by subparagraph 6 or 7, the "sex offense" means**

1. A criminal offense that has an element involving a sexual act or sexual contact with another.

2. A criminal offense that is a "specified offense against a minor" The term "Specified offense against a minor" means an offense against a minor that involves any of the following:

- a. An offense (unless committed by a parent or guardian) involving kidnapping;
- b. An offense (unless committed by a parent or guardian) involving false imprisonment;
- c. Solicitation to engage in sexual conduct;
- d. Use in a sexual performance;
- e. Solicitation to practice prostitution;
- f. Video voyeurism as described in 18 U.S.C. § 1801;
- g. Possession, production, or distribution of child pornography;
- h. Criminal sexual conduct involving a minor, or the use of the internet to facilitate or attempt such conduct;
- i. Any conduct that by its nature is a sex offense against a minor;

3. A Federal offense (including an offense prosecuted under section 1152 or 1153 of Title 18 of the United States Chapter) under section 109A (other than section 2257, 2257A or 2258) or 117, of Title 18 of the United States Chapter.

4. A military offense specified by the Secretary of Defense section 115(a)(8)(C)(i) of Public Law 105-119(10 U.S.C. 951 note); or

5. An attempt or conspiracy to commit an offense described in clauses (1) through (4)

6. Offenses involving Consensual Sexual Conduct. An offense involving consensual sexual conduct is not a sex offense for the purposes of this Chapter if the victim was an adult, unless the adult was under custodial authority of the offender at the time of the

offense, or if the victim was at least thirteen (13) years old and the offender was not more than four (4) years older than the victim.

7. Foreign Offenses. A foreign conviction is not a sex offense for purposes of this Chapter unless it was either:

a. Obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when the United States, State Department in its Country. Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in [which] the conviction occurred.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014; Special Note: the version from which this was transcribed after the initial paragraph at Subsection-A started with "These are currently the Tribes" and then listed six (6) Zuni Offenses from Title-IV (Criminal Code), but then never completed that statement; Subsection-D references offenses listed in Section 20-2-2-(F), but obviously means 23-2-2(F) of this Version, however - Section 23-2-2(F) of this Version discusses juvenile offenses and does not list other offenses; Most of Subsection-H seems to be repetitive of language that appears earlier in this Section; Subsection-H(7)(a) lacked the word "[which]" and that has been added-in above.)

§23-2-3. Tiering of Offenses

For the purposes of this Code, the covered offenses are categorized in the following tiers.

A. Tier 1 Offenses

1. A "Tier 1" offense includes any sex offense for which a person has been convicted or an attempt or conspiracy to commit such offense, that is not a "Tier 2" or "Tier 3" offense.

2. Offenses Involving Minors. A "Tier 1" offense also includes any offense for which a person has been convicted by a jurisdiction, local government, or qualifying foreign country pursuant to Section 23-2-2(C) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.

3. Pueblo of Zuni Offenses. Any sex offense covered by this act where punishment was limited to one year in jail shall be a "Tier 1" sex offense unless the [victim or] offender was under age of 21 during the time of the offense. The offender will be identified as "Tier 3". Conviction for any of the following federal offenses shall be considered "Tier 1" offenses:

- a. 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion);
- b. 18 U.S.D. § 1801 (video voyeurism of a minor);
- c. 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);
- d. 18 U.S.C. § 2252A (material containing child pornography);
- e. 18 U.S.C. § 2252B (misleading domain names on the internet);

internet);

- f. 18 U.S.C. § 2252C (misleading words or digital images on the internet);
- g. 18 U.S.C. § 2422(a) (coercion to engage in prostitution);
- h. 18 U.S.C. § 2423(b) (travel with intent to engage in illicit conduct);
- i. 18 U.S.C. § 2423(c) (engaging in illicit conduct in foreign places);
- j. 18 U.S.C. § 2423(d) (transportation of persons (Adults) ancillary offenses);
- k. 18 U.S.C. § 2424 (failure to file factual statement about an alien individual); and
- l. 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

4. Certain Military Offenses. Any comparable military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. § 951) that is similar to those offenses outlined in Section 23-2-3A(1)(2) or (3) shall be considered "Tier 1" offenses.

B. Tier 2 Offenses

1. Recidivism and Felonies. Unless otherwise covered by Section 23-2-3B, any sex offense, which is not the first sex offense for which a person has been convicted, that is punishable by more than one year in jail is considered a "Tier 2" offense. In the case of subsequent convictions from any tribal court, the offense shall be treated as if it is punishable by more than one year in jail if a substantially similar [to a] New Mexico state or federal offense is punishable by more than one year.

2. Offenses Involving Minors. A "Tier 2" offense includes any sex offense for which a person has been convicted by a jurisdiction, local government, or qualifying foreign country pursuant to Section 23-2-2(C) that involves:

- a. The use of minors in prostitution, including solicitations;
- b. Enticing a minor to engage in criminal sexual activity;
- c. A non-forcible Sexual Act with a minor 16 or 17 years old;
- d. Sexual contact with a minor 13 years of age or older, whether direct or through the clothing, that involves the intimate parts of the body;
- e. The use of a minor in a sexual performance; or
- f. The production for distribution of child pornography.

3. Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered "Tier 2" offenses:

- a. 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion);

- b. 18 U.S.C. § 2243 (sexual abuse of a minor or ward);
- c. 18 U.S.C. § 2244 (abusive sexual contact, victim 13 or older);
- d. 18 U.S.C. § 2251 (sexual exploitation of children);
- e. 18 U.S.C. § 2251A (selling or buying of children);
- f. 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);
- g. 18 U.S.C. § 2252A (material containing child pornography);
- h. 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States);
- i. 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);
- j. 18 U.S.C. § 2422(b) (coercing a minor to engage in prostitution);
- k. 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct).
- l. 18 U.S.C. § 2423(d) (Arranging, Inducing, Procuring, or Facilitating the travel in interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain).

4. Certain Military Offenses. Any comparable military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. § 951) that is similar to those offenses outlined in Section 23-2-3B(1) (2) or (3) shall be considered "Tier 2" offenses.

C. Tier 3 Offenses

1. Recidivism and Felonies. Any sex offense that is punishable by more than one year in jail where the offender has at least one minor conviction for a Tier 2 sex offense, or has previously become a Tier 2 sex offender is a "Tier 3" offense.

2. General Offenses. A "Tier" 3" offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such as offense, that involves:

- a. Non-parental kidnapping of a minor;
- b. A sexual act with another by force or threat;
- c. A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate; or

d. Sexual contact with a minor 12 years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

3. Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered "Tier 3" offenses:

- a. 18 U.S.C. § 2241 (aggravated sexual abuse);
- b. 18 U.S.C. § 2242 (sexual abuse);
- c. 18 U.S.C. § 2243 (sexual abuse of a minor [or ward]); or
- d. Where the victim is 12 years of age or younger, 18 U.S.C. § 2244 (abusive sexual contact).

4. Certain Military Offenses. Any comparable military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. § 951) that is similar to those offenses outlined in Section 23-2-3C (1) (2) or (3) shall be considered "Tier 3" offenses.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014; Special Note: the version from which this was transcribed references Section 20-2-2(C) at Subsection-A(2), but obviously means Section 23-2-2(C) of *this* Version; the version from which this was transcribed misspelled the words "bvictim of" at Subsection-A(3), which has been modified to "[victim or]" above; Subsection-A(3) also has a lone-sentence ("The offender will be identified as "Tier 3".") which seems to be misplaced therefore confusing within the paragraph; Subsection-A(4) references "Section 20-2-3A(1)(2) or (3)" but obviously means to reference "Section 23-2-2A(1)(2) or (3)" of *this* Version; Subsection-B(1) references "Section 20-203B" but obviously means to reference "Section 23-2-3(B)" of *this* Version; Subsection-B(1) also lacked the words "[to a]" which have been added-in above; Subsection-B(2) references "Section 20-2-2(C)" but obviously means to reference "Section 23-2-2(C)" of *this* Version; Subsection-B(4) references "Section 20-2-3B(1) (2) or (3)" but obviously means to reference "Section 23-2-3(B)(1), (B)(2), or (B)(3)" of *this* Version; Subsection-C(4) references "Section 20-2-3C (1) (2) or (3)" but obviously means to reference "Section 23-2-3C(1), (C)(2), or (C)(3)" of *this* Version.)

CHAPTER 3: REGISTRATION

§23-3-1. Registration Required

Any sex offender within or subject to the jurisdiction of the Tribe as provided herein must register with the Tribe as required in this Chapter.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014.)

§23-3-2. Who Must Register

A. Jurisdiction of Conviction. A sex offender must initially register with the Pueblo of Zuni Sex Offender Compliance Program if the offender was convicted of a sex offense in the Zuni Tribal Court regardless of the sex offender's actual or intended residency.

B. Jurisdiction of Incarceration. A sex offender must register with the Pueblo of Zuni Sex Offender Compliance Program if not registered pursuant to Section 23-3-2A, a sex offender

must register with the Tribe if incarcerated by the Tribe to complete any sentence for a sex offense, whether such sentence is imposed by the Zuni Tribal Court or any other court.

C. Jurisdiction of Residence. A sex offender must register with the Pueblo of Zuni Sex Offender Compliance Program if the sex offender resides within the lands subject to the jurisdiction of the Zuni Tribe.

D. Jurisdiction of Employment. A sex offender must register with the Pueblo of Zuni Sex Offender Compliance Program if the sex offender is employed by the Pueblo in any capacity or otherwise is employed within the lands subject to the jurisdiction of the Zuni Tribe.

E. Jurisdiction of School Attendance. A sex offender must register with the Pueblo of Zuni Sex Offender Compliance Program if the sex offender is a student in any capacity within the lands subject to the jurisdiction of the Zuni Tribe.

F. Jurisdiction of Tribal Enrollment. A sex offender must register with the Pueblo of Zuni Sex Offender Compliance Program if the sex offender is an enrolled tribal member with the Pueblo of Zuni.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014; Special Note: the version from which this was transcribed references "Section 20-3-2A" at Subsection-B, but obviously means "Section 23-3-2A" in this Version.)

§23-3-3. When Registration Must Occur

A. Timing. A sex offender required to register shall do so in the following timeframe:

1. When incarcerated within the jurisdiction, registration must occur before release from "imprisonment" for the registration offense. Imprisonment refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence;

2. If sentenced within the jurisdiction but not incarcerated, within 3 business days of sentencing for the registration offense; and

3. When an offender is convicted and/or sentenced in another state, territory, tribe, or country, or in a federal or military court, and chooses to reside, work, or attend school within the Zuni Reservation, registration must occur within 3 business days of the sex offender establishing residence, employment, or school attendance within the Zuni Reservation.

B. Duties of Police Department Sex Offender Compliance Program. The Zuni Police Department shall have policies and procedures in place to ensure the following:

a. That any sex offender incarcerated or sentenced by the Tribe for a sex offense completes initial registration with the Tribe;

b. That any sex offender initially registering with the Tribe is provide[d] a detailed explanation of his or her duties under SORNA and this Code;

c. That the sex offender reads and signs a form stating that the duty to register has been explained and that the offender understands the registration requirement;

d. That the sex offender is registered; and

e. That upon entry of the sex offender's information into the registry, such information is immediately forwarded to all other jurisdictions in which the offender is required to register due to the sex offender's residency, employment, or student status.

f. That all the required information pertaining to a newly registered Sex Offender be entered and updated at all times in NCIC through the Zuni Police Dispatch Center. And that all the required information be updated at all times in NSOR. The Zuni Sex Offender Registry has full access to NCIC through the Zuni Police Department's Dispatch Center. NCIC shall be accessed to obtain criminal histories on all Sex Offenders to assure proper leveling. Fugitive status and other relevant information shall be added to NCIC for use by multiple agencies. NSOR shall be immediately updated. The Zuni Sex Offender Compliance Officer shall work closely with the McKinley County Sheriff's Office and all or any other necessary Law Enforcement Agencies. Jurisdictions shall be contacted directly when information is lacking.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014.)

§23-3-4. Retroactive Registration

A. The Police Department Sex Offender Compliance Program shall have in place policies and procedures to ensure the following three categories of sex offenders are registered even if registration did not occur as required under Section 23-3-3:

1. Sex Offenders who are incarcerated or under supervision of the Tribe, for a covered sex offense at the effective date of this Code;
2. Sex Offenders already registered or subject to a pre-existing sex offender registration requirement under the [Zuni] Tribe's laws at the effective date of this Code.
3. Offenders who reenter the jurisdiction's criminal justice system because of a conviction for some other crime. (Felony, Class A or ?)

B. Timing of Retroactive Registration. Retroactive registration must be completed within the timeframe set forth in this paragraph following the effective date of this Code for each Tier:

1. For Tier 1 sex offenders, within 1 year;
2. For Tier 2 sex offenders, within 6 months; and
3. For Tier 3 sex offenders, within 3 months.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014; Special Note: the version from which this was transcribed referenced "Section 20-3-3" at Subsection-A, but obviously means to reference "Section 23-3-3" of *this* Version; Subsection-A(3) ends with "(Felony, Class A or ?)" which seems to be misplaced.)

§23-3-5. Timing of Recapture

The Zuni Police Department Sex Offender Compliance Program shall ensure recapture of the Sex Offenders within the following time frame to be calculated from the date of passage of this Chapter.

- a. For Tier 1 Sex Offenders, 1 year;
- b. For Tier 2 Sex Offenders, 180 days;
- c. For Tier 3 Sex Offenders, 90 days.

A. Keeping Registration Current

a. Jurisdiction of Residency. All sex offenders required to register must personally appear at the Zuni Police Department/Sex Offender Compliance Program to update any changes to their name, residence (including termination of residency), employment, or school. All sex offenders are required in this jurisdiction [shall] immediately inform Pueblo of Zuni Sex Offender Compliance Program via phone of any changes to their temporary lodging information, vehicle information, internet identifiers, or telephone numbers. In the event of a change in temporary lodging, the sex offender and Pueblo of Zuni Sex Offender Compliance Program shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.

b. Jurisdiction of School Attendance. Any sex offender who is a student in any capacity within lands subject to the jurisdiction of the Pueblo of Zuni, regardless of location, that change their school, or otherwise terminate their schooling shall immediately appear in person at the Pueblo of Zuni Sex Offender Compliance Program to update that information. The Pueblo of Zuni Sex Offender Compliance Program shall ensure that each jurisdiction in which the sex offender is required to register or was required to register prior to the updated information being given, are immediately notified of the change.

c. Jurisdiction of Employment. Any sex offender who is employed by the Pueblo of Zuni in any capacity or otherwise is employed within the lands subject to the jurisdiction of the Pueblo regardless of location that their employment, or otherwise terminate their employment shall immediately appear in person at the Pueblo of Zuni Sex Offender Compliance Program to update that information. The Pueblo of Zuni Sex Offender Compliance Program shall ensure that each jurisdiction in which the sex offender is required to register or was required to register prior to the updated information being given, are immediately notified of the change.

b. Registrants are required to inform the Zuni Police Department Sex Offender Compliance Program of any intended travel outside of the United States at least 21 days in advance of such travel.

c. Duties of Pueblo of Zuni Sex Offender Compliance Program. With regards to changes in the sex offender's registration information, the Pueblo of Zuni Sex Offender Compliance Office or designee shall immediately notify:

i. All jurisdictions where a sex offender intends to reside, work, or attend school, even if temporarily;

ii. Any jurisdiction where the offender is either registered or required to register; and specifically with respect to information relating to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshals Service. The Pueblo of Zuni Sex Offender Compliance Program shall also ensure this information is immediately updated on National Sex Offender Registry (NSOR).

B. SORNA Exchange Portal. The Zuni Police Department/Pueblo of Zuni Sex Offender Registration Compliance Program [shall] access the SORNA Exchange Portal, at a minimum, once a week to receive messages from other jurisdictions.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014; Special Note: the version from which this was transcribed doubled the use of the word "shall shall" at Subsection-A(a), which has been modified to "[shall]" above; the version from which this was transcribed misused the word "with" at Subsection-B, which has been modified to "[shall]" above.)

§23-3-6. Failure to Appear for Registration

A. Failure to Appear. In the event that an offender fails to register as required by this Code, the Pueblo of Zuni Sex Offender Compliance Program shall immediately inform the jurisdiction that provided notification that the offender was to commence residency, employment, or school attendance with the Tribe that the offender failed to appear for registration.

B. Failure to Register. In the event a sex offender who is required to register due to employment or school attendance status fails to do so or otherwise violates a registration requirement of this Code, the Police determine if the offender is actually employed or attending school within the Reservation, and also take all appropriate measures, including those in Section 23-4-5.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014; Special Note: the version from which this was transcribed references "Section 20-4-5" but obviously means to reference "Section 23-4-5" of *this Version*.)

CHAPTER 4: REQUIRED REGISTRATION INFORMATION

§23-4-1. General Requirements

A. Duties. A sex offender who is required to register with the Tribe pursuant to Chapter 3 shall provide all of the information detailed in this Chapter about the offender to the Zuni Police Department/Pueblo of Zuni Sex Offender Registration Compliance Program and shall obtain such information.

B. Digitization. All information obtained under this Code shall be maintained by the Police Department in digitized format and be maintained in an electronic database in a form electronically accessible by other jurisdictions.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014.)

§23-4-2. Required Information

The information required under Section 23-4-1 shall consist of the following:

A. Criminal History. This information shall include the following:

1. The date of all arrests;
2. The date of all convictions;

3. The offender's current status under parole, probation, or supervised release,
 4. The offender's registration status; and
 5. Any outstanding arrest warrants.
- B. Date of Birth. The actual date of birth and any other date of birth used by the offender.
- C. DNA Information. The offender shall provide a DNA sample, if not already contained in the Combined DNA Index System (CODIS). Any DNA sample shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile in to CODIS.
- D. Driver's License. A photocopy of all driver's licenses issued by any jurisdiction.
- E. Identification Cards. A photocopy of all identification cards issued by any jurisdiction, including any tribal enrollment card.
- F. Passports. A photocopy of any passports used by the sex offender.
- G. Immigration Documents. A photocopy of any and all immigration documents.
- H. Employment. The name and address of all employers.
- I. Finger and Palm Prints. Finger prints and palm prints in a digitized format.
- J. Internet Information including the following:
1. All email addresses;
 2. All Instant Message addresses;
 3. All other designations or monikers used for self-identification in internet communications or postings; and
 4. All designations used for the purpose of routing or self-identification in internet communications or postings.
- K. Name. The offender's full primary given name and any nicknames, aliases, and pseudonyms regardless of the context in which it is used, and any ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.
- L. Phone Numbers. All land line telephone numbers, and all cellular telephone numbers.
- M. Photograph. A current photograph of the offender. Unless the appearance of a sex offender has not changed significantly, a new digitized photograph shall be collected every 90 days for Tier 3 sex offenders, every 180 days for Tier 2 sex offenders, and every year for Tier 1 sex offenders.

N. Physical Description. An accurate physical description of the offender, including physical appearance or characteristics, and any identifying marks, such as scars, moles, birthmarks, or tattoos.

O. Professional Licenses. A photocopy of all professional or commercial licenses.

P. Address. The address of each residence at which the offender resides or will reside, and any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

Q. School Location. The name and address of each school where the offender is or will be a student.

R. Social Security. A valid social security number for the offender and any social security number the [sex] offender has used in the past, valid or otherwise.

S. Lodging Information. When the sex offender will be absent from his residence for 3 days or more, the name and address of the offender's temporary lodging, and the dates the offender will be staying at each temporary lodging location.

T. Offense Information. The text of each provision of law defining the criminal offense(s) for which the sex offender is registered. The text of each provision of law shall be cross linked to the SORNA Database containing the text of relevant sex related laws for all jurisdictions.

U. Vehicle Information. For all vehicles owned or operated by the [sex] offender, whether for work or personal use, and including land vehicles, aircraft, and watercraft, the following information:

1. License plate numbers;
2. Registration numbers or identifiers;
3. General description of the vehicle to include color, make, model, and year; and
4. Any permanent or frequent location where any covered vehicle is kept.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014; Special Note: the version from which this was transcribed references "Section 20-4-1" at the beginning sentence, but obviously means to reference "Section 23-4-1" of *this* Version.)

§23-4-3. Verification and Appearance Requirements

A. Frequency. A sex offender who is required to register with the Tribe shall, at a minimum, appear in person at the Police Department for purposes of keeping registration current in accordance with the following time frames:

1. For "Tier 1" offenders, once every year for 15 years from the date of conviction,
2. For "Tier 2" offenders, once every 180 days for 25 years from the date of conviction,
3. For "Tier 3" offenders, once every 90 days for the rest of the offender's life.

B. Reduction of Registration Periods. The registration period for an offender may be reduced as follows:

1. The registration and verification period for a Tier 1 offender may be reduced to five if the offender has maintained a clean record for 10 consecutive years,

2. The registration and verification period for a Tier 3 offender may be reduced to 25 years if the offender was adjudicated delinquent of an offense as a juvenile which required Tier 3 registration and the offender has maintained a clean record for 25 consecutive years.

C. Clean Record. For purposes of Section 23-4-3(B) a person has a clean record if the person:

1. Has not been convicted of any offense for which imprisonment for more than 1 year may be imposed. In the case of subsequent convictions from any tribal court, the offense shall be treated as if it is punishable by more than one year in jail if a substantially similar New Mexico state or federal offense is punishable by more than one year.

2. Has not been convicted of any sex offense;

3. Has successfully completed, without revocation, any period of supervised release, probation, or parole; and

4. Has successfully completed an appropriate sex offender treatment program certified by a jurisdiction or by the United States Attorney General.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014; Special Note: the version from which this was transcribed references "Section 20-4-3(B)" at Subsection-C, but obviously means to reference "Section 23-4-3(B)" of this Version.)

§23-4-4. Requirements for In-Person Appearances

A. Photographs. At each in-person verification, the offender shall permit the police to photograph the offender.

B. Review of Information. At each in-person verification the offender shall review existing information for accuracy.

C. Notification. If any new information or change in information is obtained at an in-person verification, the Police shall immediately notify all other registration jurisdictions of the information or change in information.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014.)

§23-4-5. Absconded Offenders

A. If the Zuni Police Department/Pueblo of Zuni Sex Offender Compliance Program receives information that a sex offender has absconded, the Department shall first try to verify the report. If no determination can be made, a law enforcement agency with jurisdiction to investigate must be notified.

B. If the information indicating the possible absconding came from another jurisdiction or federal authorities, the Police shall inform such jurisdiction or federal authorities that the offender has failed to appear and register.

C. If an absconded offender cannot be located, the Police shall take the following steps:

1. Update the registry to reflect the offender has absconded or is otherwise not capable of being located;

2. Seek a warrant for the offender's arrest through local courts, and in the case of a non-Indian, the U.S. Marshals Service or FBI shall be contacted in an attempt to obtain a federal warrant for the offender's arrest;

3. Notify the U.S. Marshals Service;

4. Update NSOR to reflect the offender's status as an absconder, or as otherwise not capable of being located;

5. Enter the offender in the National Crime Information Center Wanted Person File.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014.)

CHAPTER 5: PUBLIC SEX OFFENDER REGISTRY WEBSITE

§23-5-1. Website

A. Website. The Pueblo of Zuni Sex Offender Compliance Program shall use and maintain a public sex offender registry website approved by the SMART Office for tribal use.

B. Links. The registry website shall include links to sex offender safety and education resources.

C. Instructions. The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.

D. Warnings. The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.

E. Search Capabilities. The registry website shall have the capability of conducting searches by name, county, city, zip code, and geographic radius.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014.)

§23-5-2. Required and Prohibited Information

A. Required Information. The following information shall be made available to the public on the sex offender registry website:

1. Notice that an offender is in violation of registration requirements or cannot be located, if the offender has absconded;
2. All sex offenses for which the sex offender has been convicted;
3. The sex offense(s) for which the offender is currently registered;
4. The address of the offender's employer(s);
5. The name of the sex offender including all aliases;
6. A current photograph of the sex offender;
7. A physical description of the sex offender;
8. The residential address and, if relevant, a description of the offender's habitual residence;
9. All addresses of schools attended by the sex offender; and
10. The offender's vehicle license plate number and vehicle description.

B. Prohibited Information. The following information shall not be available to the public on the sex offender registry website:

1. Any arrest that did not result in a conviction;
2. The sex offender's social security number;
3. Any travel and immigration documents; and
4. The identity of the victim.
5. The sex offender's internet identifiers.
6. Information regarding sex offenders required to register on the basis of juvenile delinquency adjudications that have not attained the age of 18 years.

C. Witness Protection. For sex offenders who are under a witness protection program, the Police may honor the request for the United States Marshal Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014.)

§23-5-3. Community Notification

A. Law Enforcement Community Notification. Whenever a sex offender registers or updates information with the Pueblo, the Pueblo of Zuni Sex Offender Compliance Officer shall:

1. Immediately notify the FBI and ensure the information is updated on NSOR;

2. Immediately notify any agency, department, or program within the tribe that is responsible for criminal investigation, prosecution, child welfare, or sex offender supervision functions, including but not limited to, police, whether BIA, tribal, or FBI, tribal prosecutors, and tribal probation;

3. Immediately notify any and all other registration jurisdictions due to the sex offender's residency, school attendance, or employment; and

4. Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a).

B. Community Notification. The Zuni Police shall ensure there is an automated community notification process in place that ensures the following:

1. Upon a sex offender's registration or update of information with the [Zuni] Tribe, the public registry website is immediately updated;

2. Email notice is available to the general public to notify them when a sex offender commences residence, employment, or school attendance with the tribe, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014.)

CHAPTER 6: SANCTIONS

§23-6-1. Sanctions

A. Crime. Any violation of a provision of this code, including the provision of false or misleading information by a sex offender or altering or misusing any record concerning a sex offender shall be considered a crime and subject to a penalty of up to six months in jail or a fine of up to \$500, provided that the Tribe has criminal jurisdiction over such person.

B. Civil Penalty. Any violation of a provision of this code by a sex offender shall also be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, civil contempt, and banishment.

C. Other requirements.

1. Prohibited Areas. A sex offender is prohibited from areas, including but not limited to, being within 750 feet from any of the following:

2. Tier 1, 2, and 3.

(a) School

(b) Public Library

(c) Parks and Playgrounds

(d) Bus stops where children are present

3. Tier 2 and 3 Sex Offenders Only

(a) Social events open to the general public such as craft shows, fundraisers, sporting events, organized walks or runs, school sponsored activities or

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014; Special Note: the version from which this was transcribed drops-off after Subsection-C(3)(a), above, where the language suggests that there should be at least an additional subparagraph to follow.)

CHAPTER 7: IMMUNITY

§23-7-1. No Waiver of Immunity

No Waiver. Nothing in this Code shall be construed as a waiver of sovereign immunity of the Zuni Tribe, its departments, agencies, employees, or agents.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014.)

§23-7-2. Good Faith

Good Faith Immunity. Any person acting in good faith under the terms of this Code shall be immune from any civil liability arising out of such actions.

(Annotations: Enacted by Tribal Council Resolution No. M70-2014-Q051 on May 5, 2014.)

**END OF TITLE XXIII. SEX OFFENDER REGISTRY CODE
[RESOLUTION NO. M70-2014-Q051 ON MAY 5, 2014]**

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