

# **COQUILLE INDIAN TRIBAL CODE**

## **Chapter 185**

### **Part 1 – General Governmental Affairs**

#### **Child Protection Ordinance**

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**185.010 – General**

1. Purpose – Pursuant to the Coquille Indian Tribal Constitution, Article VI, Section 1, the Tribal Council has legislative authority to establish Tribal codes. In order to protect the health and welfare of the Tribe, its members, employees, residents, visitors, and especially its children, the Council has established policies and procedures by which certain persons coming into proximity with children must meet minimum standards of character.
  
2. Background and intent – The Coquille Indian Tribe recognizes that no resource is more vital to the Tribe’s continued existence and integrity than its children and the Tribe has a direct interest in protecting children. This Ordinance is adopted to protect the health and welfare of the Coquille Indian Tribe and its residents, Tribal members and visitors both on and off the Coquille Tribal Reservation.
  
3. Definitions –
  - (a) *Adjudication* means the process used to determine suitability for employment, contracting or volunteer work as provided below.
  - (b) *Adjudicating official* is a person appointed by Tribal Council to conduct an adjudication.
  - (c) *Child* means an unemancipated individual who is not married and has not attained 18 years of age.
  - (d) *Covered Position* means any employee, contractor or volunteer with any Tribal entity that has Regular Contact with or Control Over Children, as defined below. In the case of a service contract with a corporation, limited liability entity or similar non-individual entity having Regular Contact with or Control Over Children, “covered position” includes all employees of such entity working under such a contract who meet the test set forth in CITC 185.010(3)(e).
  - (e) *Employment* means work in a Covered Position.
  - (f) *Regular Contact with or Control Over Children* means that a person’s written or unwritten duties include or are likely to involve either:
    - (1) Personal, non-incident interaction with children that is likely to repeat over time at fixed or periodic intervals;
    - (2) The authority to direct, supervise, have unsupervised interactions with, instruct, mentor, care for, detain, or control children, in any manner; or
    - (3) Serving within the chain of command over a person described in CITC 185.010(3)(e)(1) or (2).
  - (g) *Crimes against persons* are defined by Oregon law. Adjudicating officers must contact local law enforcement agencies to determine if the particular conviction is defined as a crime against persons.
  - (h) *Tribal entity* includes, but is not limited to Tribal government programs, tribally-designated housing entities and Tribally-chartered entities.

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- (i) *Must* is used in place of shall and indicates a mandatory or imperative act or requirement.
- (j) *Tribe* means the Coquille Indian Tribe.
- (k) *Background Check Officer, or “BCO”* means the person assigned responsibility and authority to determine whether a background investigation is necessary under CITC 185.100. Unless the Tribal Executive Director directs otherwise in writing, the Tribal Human Resources Director serves as the BCO.

**185.020 – Jurisdiction**

Except as otherwise provided in this Chapter, this Ordinance applies to all Covered Positions, regardless of the location of execution or performance.

**185.030 – Rulemaking Authority**

Using the procedures set forth in CITC Chapter 120, the Executive Director shall have the authority to prescribe such rules and regulations as it deems necessary to carry out the purpose of this ordinance and to facilitate its operation.

**185.050 – Exemption for Certain Employees**

Even if federal, state or Tribal law otherwise requires a person in a covered position to satisfy a licensing or background investigation requirement, such a person will not be exempt from the requirements of this ordinance unless:

1. The licensing or background investigation requirements are at least as stringent as those required under this ordinance;
2. The person in such position has had such a background investigation within the previous twelve months and consents to a background investigation covering the period of time that passed since the prior successful background investigation;
3. The person successfully maintains any such license and successfully completes such background investigation;
4. The Tribal entity maintains the results of such background investigation in a locked filing cabinet;
5. The person signs a release permitting designated Tribal entity officials to view the results of their background investigation; and
6. The person authorizes a criminal background investigation for the period of time that passed since the date of their previous background investigation and complies with any adjudication related to that investigation.

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**185.100 – Events and Trips Involving Children Under the Tribe’s Care**

1. Employees wishing to arrange specific events and trips involving children under the care of a Tribal entity must request an advance determination from the BCO in a format prescribed by the BCO. The BCO may use the following factors as guidance to determine whether a current or prospective event requires a background investigation:

- (a) Whether the event is paid for by the Tribe;
- (b) Whether the child’s parent or legal guardian has signed a waiver expressly waiving Tribal liability and accepting responsibility for the child;
- (c) The degree to which the Tribal entity controls the environment where the event/trip will occur;
- (d) The degree of supervision over children by persons who have previously passed a background check under this Ordinance, or are otherwise exempt from a background check;
- (e) Confirmation that the child-to-adult supervision ratios required by CITC 185.600 are met; and
- (f) The likely amount of unsupervised contact or control, if any, that third parties will have with children

2. The BCO will make determinations in writing, based on all of the factors listed above. BCOs will provide a copy of their determinations to the director of their entity and the person making the request. The BCO will be responsible to ensure that any required background investigation is performed. If the BCO determines that the event or trip requires one or more background investigations, the person making the request may redesign the parameters of the trip or event and request a new BCO determination.

- (a) All paperwork required to request a background investigation must be completed and submitted to the Tribal Human Resources Department;
- (b) The applicant employee, volunteer or contractor must be notified of the decision.

3. Nothing in this Ordinance alters the supervisory relationship of any employees of any Tribal entity.

**185.120 – Background Investigations**

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All Tribal entities must conduct an investigation of the character of each person that holds, or is being considered for, a covered position, to determine their suitability for employment. Only those individuals who meet minimum standards of character will serve in a covered position. Each applicant, employee, volunteer or contractor must sign a release authorizing this background investigation. All releases must be notarized. A failure to sign such a release will be grounds for termination of employment or for determining a candidate to be unqualified for a covered position. A background investigation conducted under this Ordinance must be no less extensive than that required by the federal Indian Child Protection and Family Violence Prevention Act, 25 USC §3201 et seq.

**185.140 – Determination of Suitability**

Determinations of suitability measuring the fitness or eligibility of a person in a covered position does not evaluate a person’s education, skills, knowledge, experience, etc. Rather, it requires that the employer conduct a background investigation to:

1. Determine the degree of risk the applicant, employee, volunteer, or contractor brings to the position; and
2. Certify that the applicant’s, employee’s, volunteer’s, or contractor’s past conduct would not interfere with his or her performance of duties or create an immediate or long-term risk for any child.

**185.160 – Minimum Standards of Character**

Minimum standards of character refer to identifiable character traits and past conduct. Minimum standards of character ensure that no person will be placed in a covered position if he or she has been found guilty of or entered a plea of nolo contendere or guilty to any offense under Tribal, federal or state law involving crimes of violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons.

**185.180 – Employment Applications**

All employment applications for covered positions must:

1. Ask whether the applicant, volunteer, or contractor has been arrested or convicted of a crime involving a child, violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons;
2. Ask the disposition of the arrest or charge;

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3. Require that an applicant, volunteer, or contractor sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application; and
4. Inform the applicant, volunteer, or contractor that a criminal history record check is a condition of employment and require the applicant, volunteer, contractor or employee to consent, in writing, to a record check.

**185.200 – Process for Adjudicating Suitability**

1. *Adjudication* is the process used to determine suitability for placement in a covered position. The adjudication process protects the interests of the employer and the rights of applicants and employees.
2. Each case is judged on its own merits. All available information, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.
3. An *adjudicating official* conducts the adjudication. The Tribal Council may appoint more than one adjudicating official. Adjudicating officials must first have been the subject of a favorable background investigation and must be:
  - (a) Well-qualified and trained to perform the adjudicating official tasks.
  - (b) If the adjudicating official is not trained in these types of investigations, he or she initially must be supervised by someone that is experienced.
  - (c) Thoroughly familiar with all laws, regulations and criteria involved in making a determination for suitability.
4. The adjudicating official must review the background investigation to determine the character, reputation and trustworthiness of the individual. At a minimum, the adjudicating official must:
  - (a) Review each security investigation form and employment application and compare the information provided;
  - (b) Review the results of written record searches requested, if any, from the Tribal Police and local law enforcement agencies, former employers, former supervisors, employment references, and schools; and
  - (c) Review the results of any finger-print charts maintained by the Federal Bureau of Investigation or other law enforcement information maintained by other agencies.
5. Relevancy is a key objective in evaluating investigative data. The adjudicating official must consider prior conduct in light of:

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- (a) The nature and seriousness of the conduct in question;
  - (b) The recency and circumstances surrounding the conduct in question;
  - (c) The age of the individual at the time of the incident;
  - (d) Societal conditions that may have contributed to the nature of the conduct;
  - (e) The probability that the individual will continue the type of behavior in question;  
and
  - (f) The individual's commitment to rehabilitation and a change in the behavior in question.
6. All persons in any covered position(s) must be reinvestigated every three years.
  7. All covered positions must report any criminal arrests or convictions to their supervisor.
  8. Adjudicators must place the applicant, employee or contractor and all witnesses under oath before they testify at an adjudication.

**185.220 – Denial or Dismissal of Employment**

1. A Tribal entity must deny employment, terminate a contract or terminate employment of a person in a covered position if an adjudication under this ordinance finds that the person has been found guilty of or entered a plea of guilty or nolo contendere to any Tribal, federal or state offense involving a crime of violence, sexual assault, sexual molestation, child exploitation, sexual contact, prostitution or crimes against persons.
2. A Tribal entity must deny employment, terminate a contract or terminate employment of a person in a covered position if an adjudication under this ordinance finds that the person has been convicted of an offense involving a child victim or a sex crime. A Tribal entity also must deny employment, terminate a contract or terminate employment of a person in a covered position if that person has been convicted of a drug felony and the covered position is funded wholly or partially under an Indian Self Determination and Education Assistance Act (25 U.S.C. §§ 450 et seq.) Compact or Contract
3. If an applicant, contractor, or employee in a covered position has been charged with an offense described under subsections (1) or (2) of this section, but the charge is pending or no disposition has been made by a court:
  - (a) The Tribal entity may deny consideration of the applicant until the charge has been resolved.
  - (b) The Tribal entity may deny the employee or contractor any on-the-job contact with children until the charge is resolved.



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- (c) The Tribal entity may detail or reassign the employee or contractor to other duties that do not involve contact with children.
- (d) The Tribal entity may place the employee on administrative leave until the court has disposed of the charge.

**185.240 – Other Factors Warranting Denial or Dismissal of Employment**

An applicant, volunteer, or contractor may be disqualified from consideration or continuing employment in a covered position if an adjudication under this ordinance finds that:

1. The individual's misconduct or negligence interfered with or affected a current or prior employer's performance of duties and responsibilities;
2. The individual's criminal or dishonest conduct affected the individual's performance or the performance of others;
3. The individual made an intentional false statement, deception or fraud on an examination or in obtaining employment;
4. The individual has refused to cooperate with an investigation;
5. The individual's alcohol or substance abuse is of a nature and duration that suggests the individual could not perform the duties of the position or would directly threaten the property or safety of others;
6. The individual has illegally used narcotics, drugs or other controlled substances without evidence of substantial rehabilitation; or
7. The individual knowingly and willfully engaged in an act or activities designed to disrupt government programs.

**185. 280 – Rights of Applicant, Employee, Volunteer or Contractor**

1. Before an adjudication is final the applicant, employee, volunteer or contractor must be provided an opportunity to explain, deny or refute unfavorable and incorrect information gathered in an investigation. The applicant, employee volunteer or contractor should receive a written summary of all derogatory information and be informed of the process for explaining, denying or refuting unfavorable information.
2. Tribal entities and adjudicating officials must not release the actual background investigative report to an applicant, employee, volunteer or contractor. However, they may issue a written summary of the derogatory information as described in 185.280(1).

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3. The applicant, employee, volunteer or contractor who is the subject of a background investigation may obtain a copy of the reports from originating (Tribal, federal or state) agency and challenge the accuracy and completeness of any information maintained by that agency.
4. The results of an investigation cannot be used for any purpose other than to determine the suitability for employment in a covered position, and may be shared only with the applicant, volunteer, contractor or employee and the appropriate Tribal entity official needing such information to make a hiring determination.
5. Investigative reports contain information of a highly personal nature and should be maintained confidentially and secured in locked files. Investigative reports should be seen only by those officials who in performing their official duties need to know the information contained in the report.
6. Privacy requirements of any Tribal, federal or state agency providing background investigations will be complied with, including Tribal personnel policies safeguarding information derived from background investigations.

**185.500– Emergency Exemption**

The Tribal Council may suspend the requirements of this Ordinance during an emergency. The Tribal Council may delegate this authority by motion on the record.

**185.600 – Required Child to Adult Ratio**

1. Whenever a Tribal entity has custody, direct care and/or supervision of a child, the appropriate manager must provide a minimum supervisor-to-child ratio as described in the following table:

Age of Children	Minimum Number of Caregivers To Children	Maximum Number of Children in a Group
6 weeks of age through 23 months	1:4	8
24 months of age through 35 months	1:5	10
36 months of age to attending kindergarten	1:10	20
Attending kindergarten and older	1:15	30

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2. Nothing in this Section shall be construed to alter a less protective supervisor-to-child ration than required under applicable Federal law.

3. As noted above, adult supervisors must have successfully passed a background investigation required by this Ordinance, including any related adjudication. Violation of this section may be grounds for disciplinary action, up to and including termination.

**185.650 – Neglectful Supervision**

No person in a covered position, as part of their employment, will leave a child under the direct supervision, custody, care, or control of a person in a non-covered position, unless the person receiving direct supervision, custody, care or control has first successfully passed a background investigation required by this Ordinance, including any related adjudication. Violation of this section may be grounds for disciplinary action, up to and including termination.

**185.700 – Sovereign Immunity Intact**

Nothing in this ordinance is to be construed to create a cause of action for violation of its provisions or to be construed as a waiver of the sovereign immunity of the Coquille Indian Tribe or of any Tribal Entity, or any officers, employees, representatives or agents of the Tribe or of any Tribal Entity.

**185.800 – Severability**

If any provision of this Ordinance is held invalid by a court of competent jurisdiction, the invalid portion will be severed and the remaining provisions shall continue in full force and effect.

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