Chapter I Purpose, Definitions, and Rules of Construction

1.01 Purpose

This ordinance is adopted pursuant to Article VII, Section 1 of the Sitka Tribal Constitution, which provides that the Tribal Council has the power to safeguard and promote the peace, safety, morals, physical and general welfare of the citizens of the Tribe and their children. It is the specific purpose of this ordinance to provide for the protection of all citizens from domestic violence in a fair, prompt and effective manner by providing a process for the Tribal Court to issue civil protective orders.

1.02 Rules of Construction

(a) This Code shall not be construed or implemented in any manner which violates the Indian Civil Rights Act, or the Sitka Tribe of Alaska's Constitution and by-laws as determined by the Sitka Tribal Court.

(b) When computations of any period of time regarding ex parte protective orders are required by this Code, the time computation as defined by the Sitka Tribe of Alaska's Code of Civil Procedure does not apply.

(c) Provisions of this Code shall be construed consistently with the Children's Code, Tribal Court Rules of Civil Procedure and the Constitution of the Sitka Tribe of Alaska. Where provisions of this Code conflict with other Tribal Codes, the provisions of this Code shall govern.

(d) If this Code does not address a particular situation, the Tribal Court may adopt the process or interpretation most consistent with the spirit and letter of Tribal Law. The Court may refer to foreign sources of law, such as Tribal, federal, state or international for guidance.

(e) At the discretion of the Tribal Court, Tribal Judges may use any source of traditional Tlingit law or custom to answer questions regarding tribal custom or tradition.

1.03 Definitions

For the purposes of this Code, the following words and phrases shall have the meanings respectively ascribed to them:

(a) "domestic violence" means when a family or household member engages or exercises power or control to:

(1) engage in a pattern of verbal, emotional, or physical violence or threats against another family or household member; or

(2) commits or attempts to commit one or more of the following crimes, as defined by Alaska state law, against another family or household member:

(i) Arson or criminally negligent burning;

(ii) A crime against a person, including homicide, assault, reckless endangerment, kidnapping, custodial interference, sexual offenses, robbery, extortion and interference, as defined in AS 11.41;

(iii) Burglary;

(iv) Criminal trespass;

(v) Criminal mischief;

(vi) Destruction, Damage, or Vandalism of Property;

(vii) Disorderly Conduct

(viii) Harassment;

(ix) Sex Offenses, Forcible (Forcible Rape, Forcible Sodomy, Sexual Assault with an Object, and Forcible Fondling);

(x) Stalking;

(xi) Stolen Property Offenses;

(xii) Terroristic threatening;

(xiii) Violating a domestic violence order; or

(xiv) Weapon Law Violation;

(xv) Custodial interference.

(b) "Ex parte protective order" means an order issued without first giving the respondent notice of a request for a protective order and an opportunity to contest it. An ex parte order will be effective for 20 days unless the court dissolves or modifies it sooner.

(c) "Family or household members" include:

(i) Adults or minors who are current or former spouses;

(ii) Adults or minors who live together or have lived together;

(iii) Adults or minors who are dating or have dated;

(iv) Adults or minors who are engaged in or who have engaged in a sexual relationship;

(v) Adults or minors who are related by blood (to fourth degree of consanguinity) or adoption;

(vi) Adults or minors who are related or formerly related by marriage;

(vii) Persons who have a child in common; and

(viii) Minor children of a person in a relationship that is described in paragraphs 1 – 7.

(e) "Long term protective order" means an order issued after the respondent is given notice of a request for a protective order and an opportunity to contest it at a court hearing. Unless otherwise stated, provisions in a long term order will last for a minimum of one (1) year.

(f) "Modification Request" means a request by either the petitioner or the respondent to modify the terms of a protective order or dissolve a protective order.

(g) "Program of intervention for perpetrators" means a specialized program that accepts perpetrators of domestic violence into educational classes to satisfy court orders that has been approved via State or Tribal law, and

(i) offers treatment to perpetrators of domestic violence; or

(ii) offers classes or instruction to perpetrators of domestic violence.

(h) "Petitioner" means the person who seeks relief through a petition for a civil protective order.

(i) "Respondent" means the person, who as the alleged perpetrator of domestic violence, is the subject of a petition seeking a civil protective order.

(j) "Preponderance of the Evidence" means the evidence provided that the respondent committed a crime of domestic violence against the petitioner is of greater weight or more convincing than the evidence offered in opposition to it. Preponderance of the evidence is the burden of proof applied to Long Term Protective Orders.

(k) "Probable Cause" means that facts or circumstances exist that would lead a reasonable person to believe that the respondent committed a crime involving domestic violence against the petitioner. Mere suspicion or belief, unsupported by facts or circumstances, is insufficient. Probable Cause is the burden of proof applied to Ex Parte Protective Orders.

1.04 Full Faith and Credit

In accordance with the full faith and credit provision of the Violence Against Women Act, 18 U.S.C. Section 2265, the validity of protective orders issued by the Sitka Tribal court shall not be affected if it is not registered with the statewide protection order registry. If the petitioner requests that such protective order be registered on the statewide protection order registry, the Sitka Tribal Court shall make efforts to forward a copy of such protective order to the statewide protection order registry. Any valid protective order issued by the State of Alaska, another state, or another Tribe shall be accorded full faith and credit by the Sitka Tribe of Alaska.

1.05 Authority of the Tribal Court

The jurisdiction of the Sitka Tribal Court shall extend to all matters of domestic violence upon proper petition for a protective order where:

(a) Both the petitioner and respondent are tribal citizens.

(b) The respondent is a tribal citizen and the petitioner is not a tribal citizen;

(c) The petitioner is a tribal citizen and the respondent is not a tribal citizen; and

  (i) the respondent has entered into consensual relationships with a tribal citizen; or

  (ii) the respondent's conduct threatens or has a direct effect on the political integrity, the economic security, or the health and welfare of the tribe;

(d) Both the petitioner and respondent are not tribal citizens and the domestic violence threatens or affects children who are tribal citizens or eligible for membership.

1.06 Severability

Each provision of this Code stands on its own. Should any provision of this Code be determined invalid by a court of competent jurisdiction, that finding will not affect the validity of any other provision of this Code.

1.07 Amendments to Code

This Code may be amended by a majority vote of Tribal Council. Any duly adopted amendments shall be posted in a public place at the Sitka Tribe of Alaska Main Office Building for 30 days.

Chapter II: Civil Protective Orders and Process

2.01 General Provisions

(a) Court Fees

No filing fee shall be required for the filing of a petition for a protective order in the Sitka Tribal Court.

(b) Required Information for Protective Order Petitions

A petition for a protective order shall be signed under oath before a notary or judicial officer and shall include:

(i) The name, gender, tribal affiliation, address, telephone number, current residence, current employment, and enrollment status of the petitioner and other persons to be protected;

(ii) The name, gender, tribal affiliation, address, telephone number, current residence, current employment, and enrollment status of the respondent;

(iii) The facts that make it necessary for the person to be protected. The facts must be presented in a clear and convincing manner and shall include the following:

(a) A statement of whether the petitioner is the victim or whether some other person is the victim, and if so, the Petitioner's relationship to the person to be protected;

(b) A written factual account of the facts constituting domestic violence.

(c) A statement of what type of protective order the petitioner is seeking.

(iv) A statement of pending civil actions or domestic violence criminal actions involving either the petitioner or the respondent in any court.

(v) A statement as to whether the petitioner wants the protective order to be placed on the statewide registry or not.

(vi) The relief requested by the petitioner.

(c) Availability and Assistance with Forms

The Tribal Court Clerk shall make available to the public the forms a person seeking a protective order may need and written instructions for the use of the forms. Upon the petitioner's request, a domestic violence advocate from Sitkans Against Family Violence shall provide assistance in completing and filing the forms.

(d) Notice and Opportunity to be Heard

Reasonable notice and opportunity to be heard shall be given to the person against whom the order is sought sufficient to protect that person's right to due process

(e) Explanation of Order to Parties

The Judge shall make reasonable efforts to ensure that the order is understood by the petitioner and by the respondent, if present at the hearing.

(f) Service of Process

(i) The petitioner shall deliver the order to the Alaska State Court for filing and then to the Sitka Police Department for service. Process shall be promptly served and executed. Process shall be delivered by the Tribal Court Clerk to a peace officer of that municipality or unincorporated community who has jurisdiction within the area of service.

(ii) Service of process under (1) of this subsection does not preclude a petitioner from using any other available means to serve process issued under this chapter.

(iii) Fees for service of process may not be charged in a proceeding seeking only the relief provided in this ordinance.

(g) Entry of Protective Orders to Statewide Protection Order Registry

If in the petition or at the hearing relating to the issuance of the protective order the petitioner requests that the protective order be placed on the statewide protection order registry, the Tribal Court Clerk shall forward the order to the Alaska State Court System for registration.

(h) Lapse of Time between Act of Domestic Violence and Filing of Petition

The court may **not** deny a petition for a protective order solely because of a lapse of time between an act of domestic violence and the filing of the petition.

(i) Dual Protective Orders

The court may not issue protective orders against the petitioner and the respondent in the same action. However, the court may hear separate petitions brought by either party.

2.02 Petitions for Ex Parte Protective Orders

(a) Procedure for an Ex Parte Protective Order

(i) Upon receipt of a petition alleging domestic violence which requests an ex parte protective order the Tribal Court Clerk shall, regardless of the hour, immediately notify a Tribal Judge.

(ii) The Tribal Judge shall set the terms of an ex parte protective order. Such terms are limited to the relief listed in Section 2.04 (a)-(e), (i), (j), (m), (n), or (u) of this chapter.

(iii) The order shall include the date of the hearing.

(b) Ex Parte Protective Orders: Findings and Burden of Proof

The Tribal Judge shall issue an ex parte protective order, if the Tribal Judge finds that the petition establishes that:

(i) probable cause as defined in Section 1.03(k) that the respondent committed a crime involving domestic violence against the petitioner;

(ii) a protective order is necessary to protect the petitioner from domestic violence; and

(iii) the petitioner has certified to the court in writing the efforts, if any, that have been made to provide notice to the respondent.

(c) Ex Parte Protective Orders will be effective for 20 days from the date of issuance by the court, unless the court dissolves or modifies it sooner as defined in Section 1.03(b).

2.03 Petitions for Long Term Protective Orders

(a) Procedure for a Long Term Protective Order

(i) Upon receipt of a petition alleging domestic violence which requests a long term protective order the Tribal Court Clerk shall notify a Tribal Judge as soon as practicable. The Tribal Judge shall consider the petition and set a hearing that affords the respondent at least 10 days notice.

(ii) The Tribal Judge shall set the terms of a long term protective order. Any of the terms listed in Section 2.04 may be issued in a long term protective order.

(b) Long Term Protective Orders: Findings and Burden of Proof

The Tribal Judge shall issue a long term protective order, if the Tribal Judge finds that the petition establishes that:

(i) the respondent committed a crime involving domestic violence against the petitioner by a preponderance of the evidence as defined in Section 1.03(j);

(ii) the respondent received 10 days notice of the hearing and had an opportunity to be heard, regardless of whether the respondent appeared at the long term hearing; and

(iii) the respondent represents a credible threat to the physical safety of the petitioner or a minor child in the care of the petitioner.

(c) A Long Term Protective Order will be effective for one (1) year from the date of issuance by the court, unless the court dissolves or modifies it sooner as defined in Section 1.03(e).

2.04 Terms of Protective Order

The Tribal Judge may attach reasonable terms and provisions to any civil protective order restricting the respondent including, but not limited to:

(a) prohibiting the respondent from threatening to commit or committing domestic violence, stalking, or harassment;

(b) prohibiting the respondent from telephoning contacting, or otherwise communicating directly or indirectly with the petitioner or other family or household member;

(c) removing and excluding the respondent from the residence of the petitioner, regardless of ownership of the residence;

(d) directing the respondent to stay away from the residence, school, or place of employment of the petitioner, STA Tribal offices, or any specified place frequented by the petitioner or any family or household member;

(e) prohibiting the respondent from entering a propelled vehicle in the possession of or occupied by the petitioner;

(f) prohibiting the respondent from using or possessing a deadly weapon if the court finds the respondent was in actual possession of or used a weapon during the commission of domestic violence;

(g) directing the respondent to surrender any firearm owned or possessed by the respondent if the court finds that the respondent was in the actual possession of or used a firearm during the commission of the domestic violence;

(h) directing the respondent to surrender any firearm owned or possessed by the respondent if the court finds that the respondent was given notice of the hearing regarding the protective order and given an opportunity to respond;

(i) requesting a peace officer to accompany the petitioner to the petitioner's residence to ensure that the petitioner

  (i) safely obtains possession of the petitioner's residence, vehicle, or personal items; and

  (ii) is able to safely remove a vehicle or personal items from the petitioner's residence;

(j) awarding temporary custody of a minor child to the petitioner and may arrange for visitation with a minor child if the safety of the child and the petitioner can be protected;

(k) give the petitioner possession and use of a vehicle and other essential personal items, regardless of ownership of the items;

(l) referring the respondent to a batterer's re-education program;

(m) prohibiting the respondent from consuming controlled substances;

(n) requiring the respondent to pay support for the petitioner of a minor child in the care of the petitioner if there is an independent legal obligation of the respondent to support the petitioner or child;

(o) requiring the respondent to reimburse the petitioner or other person for expenses associated with the domestic violence, including medical expenses, counseling, shelter, and repair or replacement of damaged property;

(p) requiring the respondent to pay costs and fees incurred by the petitioner in bringing the action;

(q) withholding a portion of or all benefits and services which are directly related to being a citizen of the Sitka Tribe of Alaska;

(r) recommending to the Enrollment Committee for disenrollment from the Sitka Tribe of Alaska;

(s) ordering community service with an community service organization, including the Sitka Tribe of Alaska's traditional foods program;

(t) requiring the respondent to pay restitution to the victim and associated persons in the form of money, subsistence foods, or other appropriate reparations;

(u) prohibiting the respondent from defacing or destroying regalia or at.oow;

(v) ordering other relief the court determines necessary to protect the safety of the petitioner or any other family or household member.

2.05 Modification or Dissolution of Protective Orders

(a) Upon the request for a modification or the dissolution of:

  i. An ex parte protective order, the Court shall schedule a hearing on three (3) days notice, or shorter if deemed necessary; or

ii. A long term protective order, the court shall schedule a hearing on twenty (20) days notice, except if the court finds that the request to modify is meritless on its face, then the court may deny the request.

(b) If a request for a modification is made under this section and the respondent raises an issue not raised by the petitioner, the court may allow the petitioner additional time to respond.

(c) If the court modifies or dissolves a protective order under this section, it shall issue a modified or dissolved order and shall

i. ensure that the order is understood by the petitioner and by the respondent, if present at the hearing; and

ii. ensure that service of process is carried out pursuant to Section 2.01(f) of this chapter.

2.07 Violation of Civil Protective Orders

(a) The Tribal Court Clerk will immediately refer a civil protection order that has been violated in any manner to the Sitka Police Department.

(b) If a respondent in a protective order issued under this Code is prohibited from communicating with the petitioner, excluded from the residence of the petitioner, or ordered to stay away from the petitioner, an invitation by the petitioner to communicate, enter the vehicle or residence, or have other prohibited contact with the petitioner does not waive or nullify any provision in a protective order.