



AGUA CALIENTE BAND OF CAHUILLA INDIANS  
TRIBAL COUNCIL

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ORDINANCE NO. 15-2024

AN ORDINANCE OF THE AGUA CALIENTE BAND OF  
CAHUILLA INDIANS ADDING A NEW CHAPTER 10.02  
GENERAL PROVISIONS TO THE AGUA CALIENTE  
TRIBAL CODE

WHEREAS, the Agua Caliente Band of Cahuilla Indians (the “Tribe”) is a federally recognized Indian tribe governing itself according to the Constitution and By-Laws of the Agua Caliente Band of Cahuilla Indians adopted by the Tribe on June 28, 1955 (the “Constitution”); and

WHEREAS, the Tribe, acting by and through its duly elected Tribal Council and pursuant to Articles II and IV (a) of the Constitution, exercises inherent sovereign authority and jurisdiction over the territory within the exterior boundaries of the Agua Caliente Indian Reservation (the “Reservation”) and over other lands which may be added to the Reservation; and

WHEREAS, pursuant to Article V (a) and (b) of the Constitution, the Tribal Council, among other things, is empowered to administer the affairs and manage the business of the Band; to regulate the procedures of the Tribal Council and of other Tribal agencies; to enact ordinances and resolutions pertaining to Tribal affairs and to take all proper means to enforce the same; and

WHEREAS, the Tribal Council desires to add the chapter noted above to the Agua Caliente Tribal Code.

NOW, THEREFORE, the Tribal Council of the Agua Caliente Band of Cahuilla Indians does hereby ordain as follows:

SECTION 1. All the recitals set forth above are true and correct, and the Tribal Council so finds and determines.

SECTION 2. New chapter 10.02 is hereby added to the Agua Caliente Tribal Code to read as follows:

CHAPTER 10.02. GENERAL PROVISIONS

Sec. 10.02.010. Purpose.

This Chapter shall be liberally interpreted and construed to fulfill the following expressed purposes:



(a) To acknowledge that the law clearly provides that Indian tribes remain a separate people, with the power of regulating their internal and social relations, and when tribes exercise this power of self-governance, they do so as part of their retained sovereignty and not as an arm of the Federal Government.

(b) To acknowledge that the settled law makes clear that moreover, tribes possess "historic sovereign authority" that predates the United States Constitution and that these matters are governed by this Tribe's laws as a Sovereign Nation.

(c) To acknowledge that the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., as well as California child custody laws implementing the Act, recognize the right of tribes to hear and determine child welfare and custody proceedings in a manner established by tribal code or custom or administrative action. This includes foster care, termination of parental rights, guardianships, and adoption proceedings, including tribal customary adoptions where termination of parental rights has not occurred.

(d) To preserve the opportunity for Indian children to learn about their culture and heritage, and to become productive adult members of the Tribal community, by experiencing their culture on an ongoing basis.

(e) To set forth the legal processes for Tribal Court orders of guardianship, tribal customary adoption, conventional adoption, or long-term foster care in order to ensure that the best interests of the child are served and protected.

(f) To provide a permanency option whenever reunification efforts have failed, or reunification is not appropriate or cannot be safely achieved.

(g) To provide a permanency alternative to guardianship, conventional adoption, or long-term foster care that acknowledges the child's cultural values and the needs of the Tribe and where the child will benefit from having a multiplicity of familial, cultural, and Tribal ties.

(h) To secure the rights of and ensure fairness to the children, parents, Indian custodians, guardians, and other individuals who come before the Tribal Court under the provisions of this Code.

(i) To recognize and acknowledge the customs and traditions of the Tribe regarding child-rearing.

(j) To preserve and strengthen each child's cultural and ethnic identity whenever possible by, for example, requiring visitation with extended family/Tribal Members, attendance at cultural events, and language classes, instead of leaving these practices up to the discretion of a guardian or conventional adoptive parent.



To recognize that the Tribal Court is in the best position to make decisions regarding protecting and preserving the best interests of the child.

(l) To set forth the definitions and miscellaneous provisions specifically applicable to Chapters 10.12, 10.18, 10.20, 10.22, 10.24, and 10.26 of this Code.

(m) To support and further the Tribe's overarching goal to protect those individuals who may be at risk of or subject to abuse or neglect and unable to protect themselves from such actions.

#### **Sec. 10.02.020. Guiding principles for tribal court.**

The principles that shall guide the Tribal Court pursuant to this Chapter are:

(a) Protection of the child's safety, well-being, and welfare, their sense of belonging, and their best interests.

(b) Preservation of the child's identity as a Tribal Member and member of an extended family and clan; and

(c) Preservation of the culture, religion, language, laws, values, clan system, and relationships of the Tribe.

#### **Sec. 10.02.030. Definitions.**

The following words, terms, and phrases, when used in this Title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandon* means when a parent leaves a child without provision for care or support and the parents' whereabouts cannot be ascertained for a period of sixty (60) days, or when a parent voluntarily or pursuant to Tribal Court order relinquishes care and custody of a child and fails to communicate with the child other than on an incidental basis for a period of two (2) years or more.

*Abandonment* means:

(1) the complete lack of parental contact with his child or marginal contact for twenty-four (24) of the past forty-eight (48) months, and the failure to provide financial support for more than one (1) continuous year. Placement of the child with a member of the parent's extended family shall not constitute abandonment.

(2) the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.



*Abuse* means any case in which a child has died or has suffered or is likely to suffer a physical or emotional injury, inflicted on him by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions; or has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parents, guardian or custodian necessary for his health and well-being; or has been sexually abused or exploited; or has been emotionally abused or neglected.

*Abuse of an elder or a dependent adult* means either of the following:

- (1) Physical or emotional abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
- (2) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. This includes situations where an individual deprives an elder of medication legally prescribed to the elder.

*Adoptive placement* means the permanent placement of an Indian child for adoption, including any action resulting in a final order of adoption. Such term or terms shall not include an award, in a divorce proceeding, of custody to one of the parents.

*Adult protective services* means those preventive and remedial activities performed on behalf of elders and dependent adults who are unable to protect their own interests, harmed or threatened with harm, caused physical or mental injury due to the action or inaction of another person or their own action as a result of ignorance, illiteracy, incompetence, mental limitation, disability, substance abuse, or poor health, lacking in adequate food, shelter, or clothing, exploited of their income and resources, or deprived of entitlement due them.

*Adult protective services agency* means the Tribal Family Services Department or any county welfare department, which provides adult protective services.

*Best interest* means the preservation of the connection between a child and his culture, family, and Tribe in a setting that is stable, secure, safe, healthy, and emotionally, spiritually, socially, and intellectually enriching with due regard of the special needs of the child, or the creation of such a connection if one does not already exist.

*Bodily injury* means physical pain, illness, or an impairment of a physical condition.

*Care custodian* means a person providing care or services for elders or dependent adults.

*Caseworker* means an Advocate and Caseworker for the Tribal Family Services Department of the Tribe.

*Child Custody Proceeding* means:



(1) foster care placement: any action removing a child from his parent or custodian for temporary placement in a foster home or the home of a guardian where the parent cannot have the child returned upon demand, but where parental rights have not been terminated.

(2) termination of parental rights: any action resulting in the termination of the parent-child relationship.

(3) preadoptive placement: the temporary placement of a child in a foster home after the termination of parental rights, but prior to or in lieu of adoptive placement.

(4) adoptive placement: the permanent placement of a child for adoption, including any action resulting in a final order of adoption. Child custody proceeding shall not include a placement based upon an award in a divorce proceeding of custody to one of the parents or intra-family custody dispute.

*Child Protective Services* means the program within Agua Caliente Tribal Family Services which, in cases of child abuse or neglect and in other child-in-need-of-care situations, makes initial assessments, conducts investigations with assistance from law enforcement as necessary, provides social services to abused or neglected children and their families, and performs other related duties.

*Child-In-Need-Of-Care* means a child who is a member of or is eligible for membership in the Tribe and who: (a) Has no parent or guardian available and willing to care for him; or (b) Has suffered or is likely to certainly suffer a physical or emotional injury, inflicted on him by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions; or (c) Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parents, guardian or custodian necessary for his health and well-being; or (d) Has been sexually abused or exploited; or (e) Has been emotionally abused or neglected.

*Child welfare services* means a county child welfare agency in California or a state or local child welfare agency in another foreign, state, or tribal jurisdiction.

*Child welfare proceedings* encompasses all delegated and inherent power held by the Agua Caliente Band of Cahuilla Indians Tribal Government applicable to child welfare proceedings.

*Course of conduct* is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of "course of conduct."



*Court* means the court established by the Tribal Council of the Agua Caliente Band of Cahuilla Indians unless otherwise specified.

*Credible threat of violence* is a knowing and willful statement or course of conduct that would place a reasonable person in fear for the person's safety or the safety of the person's immediate family, and that serves no legitimate purpose.

*Department* means the Tribal Family Services Department.

*Dependent adult* means any person between the ages of 18 and 64 who resides within the territory of the Tribe and who has physical or mental limitations that restrict his ability to carry out normal activities or to protect his rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.

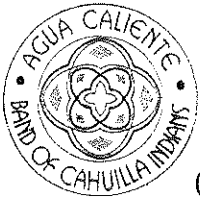
*Developmentally disabled person* means a person with a developmental disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual, including, but not limited to, intellectual disability, cerebral palsy, epilepsy, autism, disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

*Disposition* means a finding by the Tribal Court on the facts alleged in the child in need of care petition and incorporated in an order.

*Disposition hearing* means a hearing, held after a determination hearing has found a child to be deprived, neglected, or in need of care in which the Tribal Court must evaluate and make the determinations as required by Section 10.14.220 including the approval of a case service plan and the issuance of orders as appropriate.

*Domestic violence* means the commission of one or more of the following acts upon an aggrieved party or upon a member of the aggrieved party's family or household by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense or actions taken in defense of a minor child or persons deemed unable to defend themselves by virtue of age or incapacitation:

- (1) Attempting to cause bodily injury, or intentionally causing bodily injury, or attempting to cause mental anguish, or intentionally causing mental anguish; or
- (2) Placing the aggrieved party or a member of the aggrieved party's family or household in reasonable fear of imminent serious bodily injury, or mental anguish; or



(3) Forcing the aggrieved party or a member of the aggrieved party's family or household to engage in sexual activity by force, threat of force, or duress.

*Domicile* shall include a child who physically resides within the Tribe's territory in the custody of his parents or Indian custodians. The domicile of a child is that of the custodial parent or if both parents have custody, the domicile of any parent who is a member of the Tribe and has the greatest contact with the Tribe. The domicile of a child born out of wedlock is that of the biological mother unless otherwise established in the father. Domicile includes the intent to establish a permanent home or where the parents or Indian custodian consider to be their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged act(s).

*Elder* means any person residing within the territory of the Tribe, fifty-five (55) years of age or older.

*Endangered adult* means an elder or dependent adult who is at immediate risk of serious injury or death, due to suspected abuse or neglect and who demonstrates the inability to take action to protect himself from the consequences of remaining in that situation or condition.

*Enforcing court* means a tribal, state, or federal court that recognizes and enforces an ex parte or permanent order of protection against a person issued by another tribal, state, or federal court.

*Ex parte order* means an emergency order entered before notice can be given to the other party.

*Ex parte protection order* means a temporary or emergency order restraining any person from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person that is issued by a tribal, state, or federal court with subject matter jurisdiction and jurisdiction over the person restrained. The order shall also provide for an opportunity for a restrained person to be heard before the issuance of a permanent order of protection.

*Extended family* means and includes immediate family, except where otherwise distinguished in this Title herein, as in the placement preferences set out in Section 10.12.070, but also means a child's grandparents, great-grandparents, aunts, uncles, great-aunts, great-uncles, first or second cousins, nieces, and nephews, whether by blood, adoption, or marriage, or other persons recognized as the child's extended family under tribal law or custom as certified by the Tribal Council or its designee in writing.

*Family or household member* means spouses, former spouses, common-law spouses, domestic partners, parents, grandparents, children, siblings, half siblings, cousins, aunts, uncles, and adult persons or emancipated minors presently residing together or who have a child in



common regardless of whether they have been married at any time.

*Family in Need of Services* means a family determined to be in need of services when:

- (1) There is allegedly a breakdown in the parent-child relationship based on the refusal of the parent(s), Indian custodian, or guardian to permit a child to live with them or based on the child's refusal to live with his parent(s), Indian custodian, or guardian.
- (2) The conduct complained of presents a clear and substantial danger to the child's life or health and the intervention of the Tribal Court is essential to provide the treatment, rehabilitation or services needed by the child or his family.
- (3) The child or his family is in need of treatment, rehabilitation, or services not presently received and the intervention of the Tribal Court is essential to provide such treatment, rehabilitation, or services.
- (4) The conduct complained of presents a clear and substantial danger to the parent, Indian custodian, or guardian's life or health and the intervention of the Tribal Court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

*Family Services or Family Services Department* means the Tribal Family Services Department of the Tribe.

*Financial abuse* of an elder or dependent adult occurs when a person or entity does any of the following:

- (1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.
- (2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.
- (3) Performs any of the acts specified in subsection (1) or (2) above by undue influence.

A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, or retains possession of property in bad faith.

A person or entity shall be deemed to have acted in bad faith if the person or entity knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his representative.





For purposes of this section, a person or entity should have known of a right specified in subsection (1) above if, on the basis of the information received by the person or entity or the person or entity's authorized third party, or both, it is obvious to a reasonable person that the elder or dependent adult has a right specified in subsection (1).

For purposes of this section, "representative" means a person or entity that is either of the following:

- (1) A conservator, trustee, guardian, or other representative of the estate of an elder or dependent adult.
- (2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

*Foster care* means the temporary care of a child in a Tribally Approved Home as ordered by the Tribal Court as appropriate to provide such care.

*Foster care home* means a Tribally Approved Home (TAH) for the care of children in a family type setting, approved, licensed, and specified pursuant to Chapter 10.22 or, if outside the Tribal jurisdiction, approved by the law of the jurisdiction in which such facility is physically located.

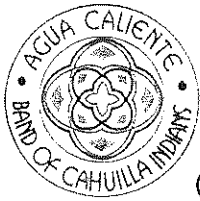
*Foster care placement* means any action removing an Indian child from his parent, Indian custodian, or guardian for temporary placement in a Tribally Approved Home where the parent, Indian custodian, or guardian cannot have the child returned upon demand, but where parental rights have not been terminated.

*Foster Home Placement* means placement with a family whose home has been approved and licensed by the Tribe to accept emergency placements of children at any hour of the day or night.

*Full faith and credit* requires enforcing an ex parte or permanent order of protection from another court as if it were an order of the Agua Caliente Tribal Court. In enforcing said order of protection, the Tribal Court shall apply all laws and ordinances that the Tribal Court has in existence at the time enforcement of the foreign protection order is sought. Registration of the protection order is not a prerequisite to enforcement under this definition.

*Goods and services necessary to avoid physical harm or mental suffering* include, but are not limited to, all of the following:

- (1) The provision of medical care for physical and mental health needs.
- (2) Assistance in personal hygiene.
- (3) Adequate clothing.



- (4) Adequately heated or cooled and ventilated shelter.
- (5) Protection from health and safety hazards.
- (6) Protection from malnutrition, under those circumstances where the results include, but are not limited to, malnutrition and deprivation of necessities or physical punishment.
- (7) Transportation and assistance necessary to secure any of the needs set forth in subsections (1) to (6), inclusive.

*Guardian* means any person who has legal custody of a child or with whom temporary care, custody, and control has been placed, by Tribal Court order, and who is responsible for the health, safety, and welfare of a child. Such a person has the duty and authority to make major decisions affecting such child's welfare, including, but not limited to major medical, psychiatric, or surgical treatment.

*Guardian ad litem* means any person appointed by the Tribal Court to represent and protect the legal rights and interests of the child in the Tribal Court proceedings.

*Guardianship of the person* means legal custody, or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:

- (1) Extraordinary medical and surgical treatment.
- (2) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child.
- (3) The authority to consent to the adoption of a child when the parent-child relationship has been terminated by Tribal Court order or the death of the parents.
- (4) The rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, or agency, or institution.
- (5) The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child. Guardianship of the person of a child, or legal custody of a child, may be taken from its parents only by Tribal Court action.

*Harassment* is unlawful violence, a credible threat of violence, or a knowing and willful pattern of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress. Harassment does not include acts of self-defense or actions taken in defense of a minor child or persons deemed unable to defend themselves by virtue of age or incapacitation.

*ICWA* means the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.



*Immediate family* means a child's parents or siblings, whether by blood, adoption, or marriage, and includes a biological parent who has established parentage under Section 10.12.050 even if the parent has never had, or currently does not have, legal or physical custody of the child or whose parental rights to the child were previously terminated.

*Imminent danger* means a substantial probability that an elder or dependent adult is in imminent or immediate risk of death or serious physical harm, through his own action or inaction, or as a result of the action or inaction of another person.

*Indian* means a member of the Tribe or any other federally recognized Indian tribe, band, group, or community.

*Indian child or child* means an unmarried person under the age of 18 who is either an enrolled Member of the Tribe or eligible for enrollment in the Tribe and is the biological child of a Member of the Tribe as determined by Chapter 10.04.

*Indian custodian* means an Indian person who is awarded legal custody of an Indian child pursuant to Section 10.12.080.

*Indian family* means a family where at least one of the parents is a member of a federally recognized tribe or eligible for membership in a federally recognized tribe.

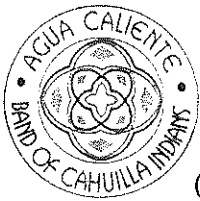
*Indian Lands* means (a) real property within or beyond the exterior boundaries of the Agua Caliente Indian Reservation owned by any Member of the Tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or (b) real property within the exterior boundaries of the Agua Caliente Indian Reservation owned by a member of any other federally recognized Indian tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or (c) real property within or beyond the exterior boundaries of the Agua Caliente Indian Reservation owned by the Tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or (d) real property within the exterior boundaries of the Agua Caliente Indian Reservation owned by the Tribe in fee simple; or (e) real property within the exterior boundaries of the Agua Caliente Indian Reservation subject to the civil or criminal jurisdiction of the Tribe.

*Initial detention hearing* means a Court hearing to make the determinations set forth in Section 10.14.200.

*Investigation* means that activity undertaken to determine the validity of a report of elder or dependent adult abuse.

*Isolation* means any of the following:

(1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his mail or telephone calls.



(2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.

(3) False imprisonment, consistent with Section 236 of the California Penal Code.

(4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

The acts set forth in subsections (1-4) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his medical care.

The acts set forth in paragraphs (1-4) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety.

*Issuing court* means a tribal, state, or federal court that issues an ex parte or permanent order of protection against a person.

*Judge* means any person duly appointed in conformity with applicable Tribal law and the Tribal Constitution to a judicial position on any Courts of the Tribe. The term "judge" as used in this Code shall not include any peacemaker, mediator or other person duly appointed or elected to engage in alternative dispute resolution (other than a judge) in any of the Courts of the Tribe.

*Law enforcement agency* means any department or agency of the federal government, state or any local government, or tribal government, that employs any peace officer, under federal, state, local, or Tribal law.

*Law enforcement officer* includes any tribal, state or county police officer, peace officer, military, or other security official of any jurisdiction within the boundaries of the United States acting pursuant to their lawful authority.

*Legal Department* or *ACLD* means the Agua Caliente Legal Department or the designee of the General Counsel to the Tribe.

*Marriage* means and includes other unions of similar legal status registered in accordance with the laws applicable to the jurisdiction in which they were created.

*Member* means a person enrolled in the Tribe as determined in Chapter 10.04.



*Mental anguish or suffering* means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult.

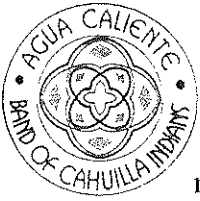
*Mutual protection order* means an order issued by a tribal, state, or federal court which restrains both parties to a proceeding from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person. In order to be enforced by the Tribal Court, a mutual protection order must be the result of both parties to a proceeding filing separate protection order petitions and the issuing court finding that each of the persons to a mutual protection order have committed an act of domestic violence or harassment under the laws of the issuing jurisdiction.

*Neglect* means, but is not limited to:

- (1) negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, and abandonment.
- (2) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.
- (3) The negligent failure of an elder or dependent adult to exercise that degree of self-care that a reasonable person in a like position would exercise.
- (4) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
- (5) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.
- (6) Failure to protect from health and safety hazards.
- (7) Failure to prevent malnutrition or dehydration.
- (8) Failure of an elder or dependent adult to satisfy the needs specified in subsections (4) to (7), inclusive, for himself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

*Neglected child* means a child:

- (1) Whose parent, guardian, or Indian custodian has subjected him to mistreatment or abuse, or whose parent, guardian, or Indian custodian has suffered or allowed another to



mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring; or

- (2) Who lacks proper parental care through the actions or omissions of the parent, guardian, or Indian custodian; or
- (3) Whose environment is injurious to his welfare; or
- (4) Whose parent, Indian custodian, or guardian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well-being, whether because of the fault of the parent, Indian custodian, or guardian because the parent, Indian custodian, or guardian does not have the ability or resources to provide for the child; or
- (5) Who is homeless, without proper care, due to, or without the fault of his parent, Indian custodian, or guardian; or
- (6) Whose parent, Indian custodian, or guardian has abandoned him.

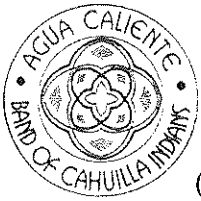
*Parent* includes a biological or adoptive parent but does not include persons whose parental rights have been legally terminated, nor does it include the unwed father whose paternity has not been acknowledged or established unless he has acknowledged paternity of the child orally to two or more disinterested parties or in writing under oath unless paternity has been established by judicial action.

*Parties* means the parents, child, any person designated by the Tribal Court as a de facto parent such as a guardian, Indian custodian, guardian ad litem, or TCASA.

*Permanent order of protection* means an order restraining any person for a specified period of time from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person issued by a tribal, state, or federal court with subject matter jurisdiction and jurisdiction over the person restrained. The order may be the result of a civil protection order proceeding or the result of an order arising from a criminal prosecution against a person. Civil orders for protection granted by the Tribal Court may be in effect for a period of time not to exceed three (3) years, and upon request may be amended, modified, or renewed for up to two (2) additional years for a total of five (5) years.

*Personal relationship* means a relationship wherein the parties involved:

- (1) Are current or former spouses;
- (2) Are current or former family or household members;
- (3) Are in or have been in a dating or romantic relationship;
- (4) Have a child in common; or



(5) Are related as parents and children, including persons acting in loco parentis to a minor child, or as grandparents and grandchildren.

*Physical abuse* means the causing of physical pain, serious illness, or an impairment of a physical condition. It includes but is not limited to:

(1) Assault, meaning an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

(2) Battery, meaning any willful and unlawful use of force or violence upon the person of another.

(3) Assault with a deadly weapon or force likely to produce great bodily injury.

(4) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(5) Unwanted or nonconsensual sexual contact of any kind, including sexual contact where the alleged abuser is aware, or should be aware, that the elder or dependent adult is unable to consent because of a physical or mental impairment at the time of the sexual activity.

(6) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:

a. For punishment.

b. For a period beyond that for which the medication was ordered pursuant to the instructions of a physician licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

c. For any purpose not authorized by the physician.

*Protected person* means any person who is protected by a protection order, whether that person personally filed or joined in the request for protection, or is a minor child or adult, claimed to be in need of protection, who is in the requesting party's care and consents to be represented or is found to be lacking in the immediate capacity to consent based upon the declaration of the requesting party.

*Preadoptive placement* means the temporary placement of an Indian child in a foster home prior to or in lieu of adoptive placement.

*Reasonable suspicion* means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his training and experience, to suspect abuse.

*Registration* is the act of either:



- (1) filing a protection order issued by another court with the Tribal Court, or
- (2) filing a protection order issued by the Tribal Court with another tribal, state, or federal court or law enforcement agency.

*Removal proceeding* means a child custody proceeding within the meaning of 25 USC 1903(1), whether in a state court or a tribal court.

*Reservation* means all lands within the exterior boundaries of the Agua Caliente Indian Reservation as established by Presidential Executive Order, federal patent, and/or deed plus any other lands held in trust by the United States for the benefit of the Tribe.

*Residual parental rights and responsibilities* means those rights and responsibilities remaining with the parent after legal custody, or guardianship of said child has been vested in another person, agency, or institution, but where parental rights have not been terminated, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to inherit from the child, the right to determine the child's religious affiliation, and the right to reasonable visitation with the child unless restricted by the Tribal Court.

*Shelter Care* means the care of a child placed in a foster home maintained by individuals or organizations to receive and care for children pending Tribal Court disposition or transfer to another jurisdiction.

*Substantiated Report* means a report of elder abuse or dependent adult abuse, where after investigation it appears to the investigator that there is probable cause to believe the allegations are true.

*TCASA* means a Tribal Court Appointed Special Advocate who is a responsible adult, other than an attorney, who has volunteered to serve as an officer of the Tribal Court and an advocate of the child, and who has been appointed by the Tribal Court to so serve.

*Termination of parental rights or termination of the parent-child legal relationship* means the voluntary (or involuntary) permanent elimination by Tribal Court order of all parental rights and duties, including residual parental rights and duties, but not including the child's right to inherit from the parent whose rights have been terminated or as otherwise provided in Section 10.16.300.

*Territory of the Agua Caliente Band of Cahuilla Indians* means (a) real property within or beyond the exterior boundaries of the Agua Caliente Indian Reservation owned by any Member of the Tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or (b) real property within the exterior boundaries of the Agua Caliente Indian Reservation owned by a member of any other federally recognized Indian tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or (c) real property within or beyond the exterior boundaries of the Agua Caliente Indian Reservation owned by the Tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or (d) real property within





the exterior boundaries of the Agua Caliente Indian Reservation owned by the Tribe in fee simple; or (e) real property within the exterior boundaries of the Agua Caliente Indian Reservation subject to the civil or criminal jurisdiction of the Tribe.

*Transfer proceeding* means any proceeding in the Tribal Court to grant, accept, or decline transfer of any children's case from or to the tribal courts of any Indian tribe or state whenever such transfer is authorized by Tribal, federal, or state law.

*Transfer to Tribal Court* means transferring a child from the jurisdiction of the state juvenile court or another tribal court to the jurisdiction of the Tribal Court which results in the termination of the jurisdiction of state juvenile court or of the other tribal court.

*Tribal Code* means the code of the Agua Caliente Band of Cahuilla Indians.

*Tribal Council or its designee* means the Tribal Council of the Agua Caliente Band of Cahuilla Indians or a person the Tribal Council has delegated disposition authority to under this Title by written resolution.

*Tribal Court* means the Agua Caliente Band of Cahuilla Indians Tribal Court when exercising jurisdiction pursuant to this Code.

*Tribal Court Judge* means any duly appointed Judge of the Tribal Court when exercising jurisdiction under this Code.

*Tribal customary adoption* means adoption pursuant to tribal custom, traditions, or law and may but need not include termination of parental rights.

*Tribal Dependent Adult* means any dependent adult who is a member of or is eligible for membership in the Tribe.

*Tribal Elder* means any elder who is a member of, or eligible for membership in the Tribe.

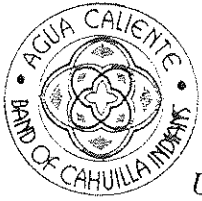
*Tribal Family Services* means the Tribal Family Services Department of the Tribe.

*Tribal law* means the laws, ordinances, regulations, resolutions, customs, and traditions of the Tribe at the time of approval of this chapter or as may be duly adopted at a later date.

*Tribally Approved Home* means a foster home approved, licensed, and specified by Tribal Family Services pursuant to Chapter 10.22.

*Tribe* means the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian Tribe. The Tribe acts through its duly constituted Tribal Council.

*Tribe* with a lower case "t", means a federally recognized tribe other than the Agua Caliente Band of Cahuilla Indians.



*Undue influence* means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

(1) The vulnerability of the victim. Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.

(2) The influencer's apparent authority. Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.

(3) The actions or tactics used by the influencer. Evidence of actions or tactics used may include, but is not limited to, all of the following:

(A) Controlling necessities of life, medication, the victim's interactions with others, access to information, or sleep.

(B) Use of affection, intimidation, or coercion.

(C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.

(4) The equity of the result. Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.

(b) Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

*Unlawful violence* is any assault or battery or stalking as prohibited by Section 646.9 of the California Penal Code but does not include lawful acts of self-defense or defense of others.

*Unsubstantiated Report* means a report of elder or dependent adult abuse or neglect where after investigation it appears to the investigator that there is no probable cause to believe the allegations are true.

(b) Miscellaneous words listed in singular form may be considered to include the plural form of each word and vice versa except where the context clearly indicates otherwise.



These definitions shall not be construed to override or amend any substantive Tribal code, laws or traditions dealing with children, elders, or dependent adults.

**Sec. 10.02.040. Miscellaneous provisions.**

(a) **Validity.** If any section, subsection, phrase, or clause of this Title is for any reason held to be unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this Title. The Tribal Council hereby declares that it would have passed the ordinance from which this Title is derived and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unlawful or unconstitutional.

(b) **Sovereign immunity.** Except as otherwise waived under this Code, nothing contained in this Title is intended to, nor does in any way, limit, alter, restrict, or waive the Agua Caliente Band of Cahuilla Indians' sovereign immunity.

**SECTION 3.** The Tribal Council hereby finds that the adoption of this Ordinance does not constitute a "Major Tribal Action" requiring the preparation of an environmental assessment or an environmental impact statement.

**SECTION 4.** If any section, subsection, phrase, or clause of this Ordinance is for any reason held to be unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Tribal Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unlawful or unconstitutional.

**SECTION 5.** Nothing contained in this Ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the Agua Caliente Band of Cahuilla Indians' sovereign immunity.

**SECTION 6.** The Tribal Council expressly reserves the right to alter, amend, or repeal this Ordinance if it determines that such action is in the best interest of the Tribe.

**SECTION 7.** This Ordinance shall become effective immediately upon its adoption.

**SECTION 8.** Upon the effective date of this Ordinance, any and all prior inconsistent resolutions, policies, ordinances, and/or procedures of the Tribe that pertain to the subject matter hereof are hereby repealed, superseded, and/or amended to comply with this Ordinance.



**SECTION 9.** Within fifteen (15) days after adoption, Tribal staff shall cause a summary of this Ordinance to be published one time in a newspaper of general circulation published and circulated on the Reservation.

**BE IT ADOPTED AND ENACTED** by the Tribal Council of the Agua Caliente Band of Cahuilla Indians, this 4th day of June, 2024.

Reid D. Milanovich, Chairman

Candace C. Patencio, Vice Chairman

Savana R. Saubel, Secretary-Treasurer

John R. Preckwinkle III, Member

Virginia Siva, Member

I, the undersigned, the Secretary-Treasurer of the Agua Caliente Band of Cahuilla Indians, hereby certify that the Tribal Council is composed of five members of whom 5, constituting a quorum, were present at a meeting whereof, duly called, noticed, convened and held on this 4<sup>th</sup> day of June, 2024; that the foregoing Ordinance was duly adopted at such meeting by the affirmative vote of 4-0-0 and that said Ordinance has not been rescinded or amended in any way.

Savana R. Saubel, Secretary-Treasurer