

AGUA CALIENTE BAND OF CAHUILLA INDIANS
TRIBAL COUNCIL

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ORDINANCE NO. 18-2024

**AN ORDINANCE OF THE AGUA CALIENTE BAND OF
CAHUILLA INDIANS ADDING A NEW CHAPTER 10.18
GUARDIANSHIPS 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 10.18 is hereby added to the Agua Caliente Tribal Code to read as follows:



CHAPTER 10.18. GUARDIANSHIPS

Sec. 10.18.010. Policy.

It is the policy of the Agua Caliente Band of Cahuilla Indians that guardianship is an acceptable and sometimes preferable placement for an Indian child instead of adoption or long-term foster care. It is also the Tribe's policy that there may be circumstances as set forth in Chapter 10.24 where a guardianship may be necessary to protect an Indian elder or dependent adult.

Sec. 10.18.020. Tribal authority to pursue action in state court.

(a) The Tribe, acting through the Tribal Council or its designee, is authorized to establish a guardianship to promote the best interests of the Indian child by filing a petition for guardianship of the person and/or estate in the Superior Court of California or, if the Indian child resides in another state, in the court of competent jurisdiction in that state when the state's law permits the Tribe to do so. The petition shall designate a person at least twenty-one (21) years of age who, at a minimum, meets the eligibility criteria set forth in Section 10.18.030, except that the person need not be an Indian person.

(b) The Tribe, acting through the Tribal Council or its designee, is authorized to establish a guardianship promote the best interests of the Indian elder or dependent adult by filing a petition for guardianship or conservatorship of the person and/or estate in the Superior Court of California or, if the Indian elder or dependent adult resides in another state, in the court of competent jurisdiction in that state when the state's law permits the Tribe to do so. The petition shall designate a person at least 21 years of age who, at a minimum, meets the eligibility criteria set forth in Section 10.18.060, except that the person need not be an Indian person.

Sec. 10.18.030. Jurisdiction of the tribal court.

(a) The Tribal Court shall have authority, whenever it appears necessary or convenient, to appoint guardians for the persons and/or estates, or for the purpose of actual or contemplated litigation (guardian ad litem) of either children, elders, or dependent adults who reside within the territory of the Tribe and who have physical or mental limitations that restrict their ability to carry out normal activities, to protect their rights, including but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of advanced age, accident or injury, or chronic use of drugs or alcohol.

(b) 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 eligible to be a member of the Tribe, whether or not he lives within the territory of the Tribe.



(c) General Jurisdiction. The Tribal Court shall have jurisdiction within the meaning of this Chapter over the following persons:

- (1) An enrolled member of the Tribe or person eligible for membership.
- (2) Any person causing an Indian child, elder, or dependent adult to come within the jurisdiction of this Code.
- (3) Any other person who consents to Tribal Court jurisdiction.

(c) Jurisdiction over extended family. Where the Tribal Court asserts jurisdiction over a person under Section 10.18.030(b), the Court shall also have jurisdiction over the person's extended family whenever that Court deems it appropriate.

(d) Continuing jurisdiction. Where the Tribal Court deems it appropriate, the Tribal Court may retain jurisdiction over children, elders, and dependent adults and their extended families who leave the territory of the Tribe.

Sec. 10.18.040. Transfer of jurisdiction.

(a) Application of the Indian Child Welfare Act. The Tribal Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, where they do not conflict with the provisions of this Code. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Tribal Court except where specifically provided for in this Code.

(b) Transfer from Other Courts. The Tribal Court may accept or decline, under the procedures set forth in this Code, transfers of cases from other state, or tribal courts when the transfer would be in the best interests of the child, elder, or dependent adult.

(c) Transfer to State Court or Other Tribal Court. In any proceeding before the Tribal Court, the Tribal Court may transfer the proceedings to an appropriate state court or another tribal court where the state or other Indian tribe has a significant interest and the transfer would be in the best interests of the child, elder, or dependent adult.

Sec. 10.18.050. Procedures for transfer of guardianship proceedings from state court.

(a) Receipt of Notice: The Agua Caliente Legal Department or designee (ACL D) shall be the agent for service of notice of the state court guardianship proceedings.

(b) Intervention. The ACL D or designee shall file a motion to intervene in the state court within five (5) days of receipt of notice upon confirmation by the Agua Caliente Tribal Enrollment



Committee as set forth in Chapter 10.04 that the child is a Tribal member or is eligible for membership and the biological child of a member, or in the case of an elder or dependent adult, that they are a member or eligible for membership. Failure to file such a motion within the five-day time period shall not preclude the Tribe from intervening at a later date.

(c) Investigation and Pre-Transfer Report: The Tribal Family Services Advocate and Caseworker (Caseworker) shall investigate, file a written report, and issue a recommendation on transfer with the ACLD.

(d) Decision to Transfer. The ACLD shall consider these factors in deciding whether or not the Tribe should petition for transfer from the state court:

- (1) The best interests of the child, Elder, or dependent adult.
- (2) The best interests of the Tribe.
- (3) Availability of services for the child, elder, or dependent adult, and their family or support units.
- (4) Prospects for permanent placement for the child; and
- (5) Conservation of Tribal resources.

(e) Request for Hearing. The ACLD shall request a hearing on the recommendation with the Tribal Court.

(f) Tribal Court Hearing on Transfer Recommendation: The Tribal Court shall conduct a hearing to determine if the Tribal Court should accept transfer prior to the filing of a petition for transfer with the state court. The Tribal Court shall consider the factors set forth in subsection (d) above.

(g) The Tribal Court has discretion to accept or deny transfers from state courts. The hearing on whether or not to accept transfer shall be conducted prior to dismissal of the matter in state court.

(h) Petition for Transfer. The Tribal petition for transfer shall be filed in the state court by the ACLD or designee within five (5) working days of receipt of the Tribal Court's decision.

(i) Hearings upon Transfer. Upon receipt of transfer of jurisdiction from state court, the Tribal Court shall hold appropriate hearings in accordance with this Code.



Sec. 10.18.060. Who may serve as guardian.

Any adult person eighteen (18) 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 child, elder, or dependent adult in order of their closeness of familial and extended familial relationship and some preference shall also be given to a person with whom the child, elder, or dependent adult is living at the time of guardianship hearing. Preference shall be given to the person preferred to act as his guardian by a child over the age of twelve (12), elder, or dependent adult, but in all cases, the Tribal Court shall determine the best interests of the child, elder, or dependent adult in selecting a guardian.

Sec. 10.18.070. Powers, duties, and responsibilities of guardian.

(a) Except as otherwise specifically ordered or limited by the Tribal Court:

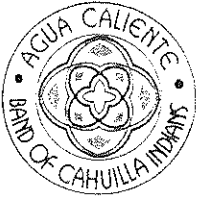
(1) A guardian of the person of a child, elder, or dependent adult shall have the right to take or provide for the custody of the person of the child, elder, or dependent adult and shall be required to care for the health, safety, and welfare of such child, elder, or dependent adult and provide for their education and medical care as needed or appropriate.

(2) A guardian of the estate shall preserve, protect, and manage the child's, elder's, or dependent adult's property for the best interest of the child, elder, or dependent adult, to the extent consistent with tribal and federal laws.

(3) After first having obtained the express written consent of the Tribal Court, a guardian of the estate of a child, elder, or dependent adult shall have authority to invest, manage, and dispose of the property of the child, elder, or dependent adult 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 child, elder, or dependent adult given the size and nature of the estate and the station in life and needs of the child, elder, or dependent adult.

(4) A guardian ad litem shall have power and authority to represent a child's, elder's, or dependent adult's best interests in actual, threatened, or contemplated litigation or other proceedings of a legal nature (other than of a criminal nature), and to employ counsel, and settle or compromise suit or claims, subject to the approval of the Tribal Court.

(5) A guardian of the estate shall file with the Tribal Court an annual accounting of the guardian's administration of the property of the child, elder, or dependent adult.



(6) A guardian may apply to the Tribal Court for an order authorizing the sale of any property of the child, elder, or dependent adult or authorizing payments out of the estate of the child to the child or on his behalf or out of the estate of the elder or dependent adult to the elder or dependent adult or on his behalf.

(b) A guardian of any kind may petition the Tribal Court for authority to do any act about which he is uncertain, and the Tribal Court may grant such authority, after such notice and hearing, if any, as the Tribal Court may direct if such appears to be consistent with the best interests of the child, elder, or dependent adult.

Sec. 10.18.080. Fiduciary obligations of guardians.

(a) Requirements for Guardians. Anyone appointed a guardian of the person or property of a child, elder, or dependent adult must have the following qualifications:

- (1) A reputation for honesty and trustworthiness within the community.
- (2) A competency in reading comprehension.
- (3) A competency with arithmetic and financial management for guardians of property.
- (4) The ability to secure a bond in an amount sufficient to cover the value of the property being managed for another, if required.

(b) Fiduciary Obligations. Any individual appointed a guardian of a child's, elder's, or dependent adult's property shall have a fiduciary relationship to the child, elder, or dependent adult. At a minimum, the guardian must do all of the following:

- (1) Take the utmost care to preserve the property and shall exercise a high degree of care in managing the estate of the child, elder, or dependent adult.
- (2) Avoid waste of the property of the child, elder, or dependent adult.
- (3) Keep a careful accounting of all transactions involving the property or finances and present the accounting to the Tribal Court whenever ordered.
- (4) Keep the property and finances of the child, elder, or dependent adult separate from the guardian's own property and finances, including no commingling of funds.
- (5) Never use the property or finances of the child, elder, or dependent adult for the guardian's personal gain.



(6) Derive no personal benefit of any kind from his management of the estate of the child, elder, or dependent adult excepting any compensation of the guardian as specifically authorized by the Tribal Court.

(7) Shall be civilly liable to said child, elder, or dependent adult for any losses to the estate attributable to a breach of these duties. Action to enforce such liability may be brought by the child, elder, or dependent adult or by a subsequently appointed guardian on behalf of the child, elder, or dependent adult within three (3) years after the appointment of a new guardian or the removal of incompetency or reaching the age of majority.

(c) Explanation of Fiduciary Obligations. The Tribal Court must personally explain at the hearing the fiduciary obligations to any proposed guardian of property. Where the Tribal Family Services Department is appointed public guardian, the Court need not explain the fiduciary duties to the Caseworker.

Sec. 10.18.090. Security for faithful performance of duties.

The Tribal 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. If the child's, elder's, or dependent adult's estate includes real or personal property and is (1) valued at more than \$5,000; (2) has monthly income exclusive of public benefit payments valued at \$1,000 or more; and (3) not all the income from the estate will be used for the benefit of the child, elder or dependent adult, the Tribal Court may require the guardian to file a bond or other security payable to the Court in a sum fixed by the Tribal Court to protect against the guardian's mismanagement of the estate. Any surety of any such security will be deemed to have consented to the jurisdiction of the Tribal Court for the purposes of action against such security.

Sec. 10.18.100. Oath; letters of guardianship.

(a) The guardian appointed by the Tribal Court shall be required to take an oath, the form of which to be prescribed by the Tribal Court, to the effect that he will faithfully perform his duties as guardian.

(b) Upon taking the oath and filing with the Tribal 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 Tribal Court, as evidence of his appointment. Any limitations in the authority of the guardian shall be set forth on the Letters so issued by the Tribal Court.

Sec. 10.18.110. Inventory and appointment.

(a) Within forty-five (45) days after the appointment of a guardian of the child, elder or dependent adult or a guardian of the estate of a child, elder, or dependent adult, the guardian shall prepare and submit to the Tribal Court an inventory and appraisal of the estate or as otherwise ordered by the Tribal Court.



(b) The appraisal shall be made by two (2) disinterested persons who shall certify under oath their appraisal and may receive reasonable compensation for their services.

(c) No appraisal 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 appraisal is required, the guardian shall certify under oath the obvious or estimated value of the assets not appraised.

Sec. 10.18.120. Compensation.

The Tribal Court may, in its discretion, issue an order requiring a Tribal Member parent to pay for the cost of a court-ordered guardian for his minor child or children or in the case of an elder or dependent adult, requiring payment from the estate of the elder or dependent adult. If such an order is issued, the Tribal Court shall forward an order to the Tribal Finance Department directing payments be made on a month-to-month basis from per capita distribution of the parent(s) or the elder or dependent adult, as applicable, until modification or termination of the order is made and delivered to the Tribal Finance Department. The Tribal Court may also order payment from other sources of funds.

Sec. 10.18.130. How guardians are appointed.

(a) By will. The last surviving parent or spouse of a child, elder, or dependent adult may designate in a will, the guardian for the child, elder, or dependent adult. Upon determination by the Tribal Court that the will is valid, and that the person designated is willing to accept the responsibilities of guardianship, the Tribal Court shall appoint the person designated; provided that for good cause shown, the Tribal Court may decline to appoint the person designated.

(b) By Tribal Court appointment. Where a child, elder, or dependent adult is in need of a guardian, and no guardian is appointed pursuant to a valid will, the Tribal Court may appoint a guardian to promote the best interests of the child, elder, or dependent adult.

(c) Hearing. In each case where a guardian is to be appointed, either by will, or by Tribal Court appointment, a hearing shall be held following notice to all interested parties.

Sec. 10.18.140. Appointment of Guardian.

(a) Upon petition by any person with a legitimate interest in the welfare of the child, the Tribal Court may appoint a guardian for a child who is without both parents or whose parents are unavailable for reason of incarceration or commitment or otherwise unable to care for the child after reasonable reunification efforts have been unsuccessful. Except when the petitioner is a person with an interest in the child, the decision to allow a person to petition for the appointment of a guardian shall be in the Tribal Court's discretion. The Tribal Court may impose any restriction or limitation on the powers of a guardian or condition its appointment on the guardian's performance of specified duties, consistent with this Chapter, it finds will help protect the child's



best interests. A petition for guardianship of an elder or dependent adult may also be filed by any person with a legitimate interest in the welfare of the elder or dependent adult.

(b) A guardian may be appointed to exercise custody and the power to make decisions of importance to the child, elder, or dependent adult's health, education, support, and welfare. Such a guardian shall be known as a "guardian of the person." A guardian of the person may not manage the financial interests of the child, elder, or dependent adult.

(c) A guardian may be appointed to conserve the assets, income, and financial interests of a child, elder or dependent adult, subject to a duty of disclosure and reporting to the Tribal Court regarding such matters no less than annually. Any such order shall fix a date or dates for the filing of such reports and may require the posting of a bond or other conditions to protect the child's, elder's, or dependent adult's interests. Such a guardian shall be known as a "guardian of the estate." A guardian of the person may be guardian of the estate or separate guardians may be appointed.

(d) A guardian of the person or estate of an elder or dependent adult may also be appointed by the Tribal Court pursuant to an Adult Protection Order under Chapter 10.24 of this Code.

Sec. 10.18.150. Appointment of guardian ad litem for parent of child, elder, or dependent adult.

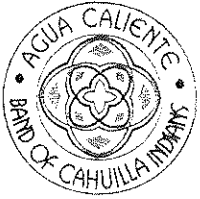
(a) Whenever, with respect to any petition filed under this Chapter, it appears that either parent of the child is a child, elder, or dependent adult, the Tribal Court shall appoint a Guardian Ad Litem for such parent. The Guardian Ad Litem shall be an attorney authorized to practice law in the Tribal Court.

(b) The Guardian Ad Litem shall be allowed reasonable compensation which shall be assessed against the petitioner consistent with this Code. If the Tribal Court finds that the petitioner is unable to pay, reasonable compensation shall be paid by the Tribe, which may seek reimbursement of such fees according to Tribal law.

Sec. 10.18.160. Child may nominate guardian.

(a) If a child is under the age of fourteen (14) years, the Tribal Court may nominate or appoint their guardian. If the child is fourteen (14) years of age or older, the child may nominate their own guardian who, if approved by the Tribal Court, must be appointed accordingly.

(b) If the guardian nominated by the child is not approved by the Tribal Court, or if the child resides outside of the territory of the Tribe, or if, after being duly cited by the Tribal Court, the child neglects for ten (10) days to nominate a suitable person, the Tribal Court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen (14) years.



(c) When a guardian has been appointed by the Tribal Court for a child under the age of fourteen (14) years, the child, at any time after the child attains that age, may nominate their own guardian, subject to the approval of the Tribal Court. A guardian appointed may as specified by the Tribal Court have the custody and care of the education of the child and the care and management of their estate until such child arrives at the age of eighteen (18), marries, is emancipated by the Tribal Court or a court of competent jurisdiction, or until the guardian is legally discharged, provided, however, that said guardian shall not have the authority, without express written consent of the Tribal Court, to dispose of any real or personal property of the child in any manner, including, but not limited to, the child's Individual Indian Money Account and the child's per capita distribution held for the child's benefit in the Minor's Trust Fund. Said guardian shall also have the authority to consent to the medical care and treatment of the child.

Sec. 10.18.170. Types of guardianship.

Guardianship of the person shall include both temporary guardianship and permanent guardianship.

Sec. 10.18.180. Permanent guardianship.

The Tribal Court may appoint a permanent guardian for the child, elder, or dependent adult under such terms and conditions as the Tribal Court sets forth in the written order. Permanent guardianship provides for permanent custody of a child to someone other than the parent(s), although there is no termination of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. The parent(s) and the child's, elder's, or dependent adult's extended family may be granted visitation if the Tribal Court determines that it is in the best interests of the child, elder or dependent adult.

Sec. 10.18.190. Temporary guardianship.

The Tribal Court may appoint a temporary guardian for the child, elder, or dependent adult under such terms and conditions as the Tribal Court sets forth in the written order. A temporary guardianship may be terminated if the Tribal Court determines that it is in the best interest of the child, elder, or dependent adult to change custody from the temporary guardian to a new guardian or to return the child to the parent, Indian custodian, or guardian. The parent(s) and the child's, elder's, or dependent adult's extended family may be granted visitation if the Tribal Court determines that it is in the best interests of the child.

Sec. 10.18.200. Guardianship of estate.

The Tribal Court may appoint a guardian of the estate, including non-BIA trust assets of a child, elder, or dependent adult under such terms and conditions as the Tribal Court sets forth in the written order. The guardianship may cover all property until the child reaches eighteen (18) years of age or until the elder or dependent adult becomes competent or it may be limited to only specific property, or a specific legal action as set forth in the written order. A temporary or permanent



guardianship of the person may also include guardianship of the child's, elder's, or dependent adult's estate if set forth in the written order.

Sec. 10.18.210. Guardianship of BIA trust property.

The Tribal Court is authorized to appoint a guardian of the BIA trust assets of the child, elder, or dependent adult's 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 child, elder, or dependent adult if it appears that the price to be paid is reasonable and adequate and that such sale is in the best interests of said child, elder, or dependent adult. All actions taken by such guardian consenting to or conveying trust property shall be subject to the approval of the Tribal Court and the Secretary of the Interior.

Sec. 10.18.220. Temporary guardianship and custody.

The Tribal 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, elder, or dependent adult provided, that full notice and opportunity to be heard be given to all parties at least ten (10) days prior to the hearing, and further provided that no guardian so appointed may sell, dispose of, convey, or otherwise alienate title to or interest in the child's, elder's, or dependent adult's property during such temporary period.

Sec. 10.18.230. Management of estate.

(a) In the event that a guardian shall receive any money or funds of any child, elder, or dependent adult during their term of office as guardian, before taking and receiving into custody such money or funds, the Tribal Court may require of such person a bond with sufficient surety to be approved by the Tribal Court and in such sum as the Tribal Court shall order, conditioned that the guardian will faithfully execute the duties of their trust, and the following conditions shall form the part of such bond without being expressed therein:

(1) To make an inventory of all of the estate of the child, elder, or dependent adult that comes into their possession or knowledge pursuant to Section 10.18.110 and to return the same within such time as the Tribal Court may order; and

(2) To dispose of and manage the estate according to law and for the best interests of the child, elder, or dependent adult, and faithfully to discharge their trust in relation thereto, and also in relation to the care, custody, and education of the child, elder, and dependent adult; and

(3) To render an account on oath of the property, estate, and money of the child, elder, or dependent adult in their hand and all the proceeds or interests derived therefrom, and of the management and disposition of the same, within ninety (90) days after their appointment, and at such other times as the Tribal Court directs, and at the expiration of their trust, to settle their accounts with the Tribal Court or with the child if the child is now of full age, or their legal



representative, and to pay over and deliver all the estate, monies, and effects remaining in their hands, or due from them on such settlement to the person who is legally entitled thereto.

(b) The funds of any child, elder, or dependent adult must be used by their guardian solely for the support and education of such child, elder, or dependent adult and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such child, elder, or dependent adult, and in such manner as can reasonably be afforded according to the income and estate of said child, elder, or dependent adult.

(c) If determined appropriate by the Tribal Court, the written order may set forth that the child's property may not be used for the child's care, but rather to be managed for the child until the child reaches the age of eighteen (18) or is emancipated by the Tribal Court or a court of competent jurisdiction.

Sec. 10.18.240. Petition and order for disbursement of funds.

(a) A guardian of the minor may apply to the Tribal Council for distribution of funds to address life-threatening situations .

(b) An adult Tribal Member who has been determined to be non-competent by a court of competent jurisdiction, as evidenced by a written court order submitted to the Tribal Council and has a court-appointed guardian or conservator, may apply to the Tribal Council for the distribution of funds.

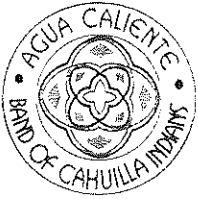
(c) A guardian of the estate of a child, elder, or dependent adult may then petition the Tribal Court for the authority to expend or distribute an appropriate portion of the funds authorized for distribution by the Tribal Council.

Sec. 10.18.250. Petition for guardianship.

(a) Guardianship proceedings shall be initiated by the filing of a petition by a relative or other person on behalf of the child, elder, or dependent adult, or by a child himself if over fourteen (14) years of age. The Tribal Court may initiate proceedings to appoint a guardian if such an appointment reasonably appears necessary and no other person has initiated such proceedings.

(b) Guardianship Petition. The petition for guardianship may be filed by any of the following persons:

- (1) Either or both parents, including a parent who is a child.
- (2) Caseworker on behalf of the Tribe.
- (3) Any person possessing a legitimate interest in the matter.



- (c) The petition for guardianship shall include the following information:
- (1) The name, sex, date, and place of birth, present address, and tribal affiliation of the child, elder, or dependent adult who is the proposed ward.
 - (2) The name and address of the petitioner, and the nature of the relationship between the petitioner and the child, elder, or dependent adult.
 - (3) The names, dates of birth, address, tribal affiliation of the child, elder, or dependent adult's parents.
 - (4) The name of the person or agency of the proposed guardian.
 - (5) If the parent of the child is a child, the names and addresses of the parents or guardian of the child.
 - (6) The name and address of the person or agency having legal or temporary custody of the child, elder, or dependent adult.
 - (7) The facts upon which the guardianship is sought, the effects of the guardianship, and the basis for the Court's jurisdiction; and
 - (8) A statement describing the property owned, possessed, or in which the child, elder, or dependent adult has an interest, and the value of such property or property interest.
- (d) If the information required under subdivisions (2), (3) and (7) of subdivision (c) of this Section is not stated, the petition shall be dismissed. If any of the other facts required hereunder are not known or cannot be ascertained by the petitioner, the petitioner shall so state in the petition. The petitioner shall sign and date the petition and attest to the veracity of the information contained therein.

Sec. 10.18.260. Notice.

- (a) Notice of the hearing and a copy of the petition, certified by the petitioner or his attorney or the Tribal Court Clerk, shall be served at least ten (10) days before the date of the hearing by personal service on the persons enumerated in subsection (b) below. If personal service cannot be reasonably effected, a Tribal Judge or Tribal Court Clerk shall order notice to be given by registered or certified mail, return receipt requested. If the parent, Indian custodian, or guardian cannot be found, notice shall be given to members of the extended family of the parent, Indian custodian, or guardian and/or the extended family of the child, elder, or dependent adult.
- (b) The Tribal Court shall also cause a notice of the hearing to be given to the parents of the Indian child, including any parent of a child who is himself a parent, the Indian custodian, guardian,



or any other person whom the Tribal Court deems appropriate, the Director Tribal Family Services, and to the child if he is over the age of fourteen (14), the elder, or the dependent adult. The notice shall state that the party for whom guardianship is being sought has the right to be represented by counsel.

(c) Notice and appearance may be waived by a parent of an Indian child in writing before the Tribal Court, provided that such parent has been apprised by the Tribal Court of the meaning and consequences of the guardianship action. The parent who has executed such a waiver shall not be required to appear at the subsequent hearing. Where the parent is a child, the waiver shall be effective only upon approval by the Tribal Court.

(d) A courtesy notice of the hearing and a copy of the petition, certified by the petitioner or his attorney or the Tribal Court Clerk shall be given to the Secretary of the Interior.

Sec. 10.18.270. Guardianship report.

(a) Upon the filing of a guardianship petition, the Tribal Court shall immediately request that Tribal Family Services or other qualified agency conduct a guardianship report on the proposed guardian and report on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the Tribal Court in determining the best interests of the proposed ward.

(b) The proposed guardian and each member of the proposed guardian's household, age eighteen (18) or over, must submit to a drug test and a background investigation and should be free from unacceptable criminal and child welfare backgrounds. Background investigations include submitting to state and federal background checks, fingerprinting, child welfare history checks, local law enforcement checks, electronic database criminal searches, child abuse central index search, and any other check required by Tribal Family Services. To be approved, all individuals must provide background information and must successfully complete a Criminal and Child Abuse Background Check that is consistent with the standards set forth in the Health and Safety Code Sections 1522 and 1522.1.

(c) No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Tribal Court. The guardianship report shall be submitted to the Tribal Court no later than ten (10) days before the hearing unless otherwise ordered by the Tribal Court. The Tribal Court may order additional reports as it deems necessary.

Sec. 10.18.280. Consent to guardianship of an Indian child.

(a) If a petition indicates that either or both parents consent to the guardianship of an Indian child, or if any time following the filing of a petition and before the entry of a final order, a parent consents to the guardianship, each consenting parent shall acknowledge such consent in writing on a form promulgated by the Chief Judge, before the Tribal Court, evidencing to the satisfaction of the Tribal Court that the parent has voluntarily and knowingly consented to the guardianship



and that the terms and consequences of such consent are understood by the parent. The Tribal Court shall also certify that either the parent or guardian fully understood the explanation in English or that it was interpreted into a language that the parent or guardian or custodian understood.

(b) No voluntary consent to guardianship of an Indian child, by a mother shall be executed prior to or within ten (10) days after the birth of the child. A child who is a parent shall have the right to consent to the guardianship and such consent shall not be voidable by reason of being a child.

(c) In any voluntary guardianship proceeding involving an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final order, and where the child has been placed out of the family, the child shall be returned to the parent unless the Tribal Court finds good cause to the contrary not to return the child.

Sec. 10.18.290. Hearing on petition.

(a) At the hearing held on the petition for guardianship, any party to whom notice was given shall have the right to appear and be heard with respect to the petition. If the parent who is consenting to the guardianship of an Indian child appears at the hearing, the Tribal Court shall explain to the parent the meaning and consequences of the guardianship action.

(b) Upon finding at the hearing or at any time during the pendency of the petition that reasonable cause exists to warrant an examination, the Tribal Court, on its own motion or on motion of any party, may order the child, elder, or dependent adult to be examined by a physician, psychiatrist, or licensed clinical psychologist appointed by the Tribal Court. The Tribal Court may also order an examination of a parent or guardian whose competency or ability to care for an Indian child is at issue before the Tribal Court. The expenses of any examination, if ordered by the Tribal Court shall be paid by the petitioner, or if ordered on motion by a party, shall be paid for by that party unless such party or petitioner is unable to pay, in which case, they shall be paid by the Tribal Court. The Tribal Court may consider the results of the examination in ruling on the merits of the petition.

(c) The Tribal Court may, in any contested case, request the Tribal Family Services Department to make an investigation and written report to the Tribal Court within forty-five (45) days from receipt of such request or as otherwise ordered by the Tribal Court. The report shall indicate the physical, mental, and emotional health of the child, elder, or dependent adult and shall contain such facts as may be relevant to determine whether the proposed guardianship will be in the best interests of the child, elder, or dependent adult, including the physical, mental, and social and financial condition of the proposed guardian, and any factors which the agency deems relevant to determine whether the proposed guardianship will be in the best interests of the child, elder, or dependent adult.



(d) If such a report is requested, the Tribal Court shall schedule a hearing not more than thirty (30) days from the date of the expiration of the forty-five (45) day time period or receipt of the report, whichever is earlier or as otherwise ordered by the Tribal Court. The Tribal Court shall give reasonable notice of the investigation hearing to all parties to the first hearing.

(e) The report shall be admissible in evidence, subject to the right of any interested party to require that the person making it appear as a witness and subject himself to examination.

(f) At either the investigation hearing or the first hearing, if no investigation and report has been requested, the Tribal Court may approve the petition for guardianship and may appoint a guardian of the person of the child, elder or dependent adult, if it finds by a preponderance of the evidence, including the testimony of a qualified expert witness, that the guardianship is in the best interests of the child, elder, or dependent adult and, with respect to any consenting adult that such consent was voluntarily and knowingly given.

(g) If the Tribal Court denies a petition for guardianship, with or without consent, it may refer the matter to the Family Services Department to assess the needs of the child, elder, or dependent adult, the care the child, elder, or dependent adult is receiving, and a remediation plan for the parent of the child.

Sec. 10.18.300. Findings and orders.

(a) The Tribal Court shall make written findings in determining whether to appoint a guardian based on a consideration of:

(1) The timeliness, nature and extent of services offered or provided to the child or parent by any tribal or state agency to facilitate the preservation of the family.

(2) The terms of any applicable Tribal Court order and the extent to which the parties have fulfilled their obligations thereunder.

(3) The feelings and emotional ties of the child with respect to his parents, the proposed guardian, or any person who has provided physical care or custody to the child during the preceding year and with whom the child has developed significant emotional ties.

(4) The age of the child.

(5) The efforts the parent has made to make it in the best interests of the child to be reunited with the parent; and

(6) The extent to which the parent may have been prevented from maintaining a meaningful relationship with the child.



(b) Whenever the Tribal Court finds that a guardian should be appointed, the Tribal Court shall appoint either a temporary or permanent guardian over the person of the child under such terms and conditions as the Tribal Court sets forth in the written order. An appointment of a guardianship shall not terminate the parental rights of the parents of the child; however, the guardian shall have the responsibility for the care, custody, and education of the child until he attains the age of eighteen (18) years, marries, is emancipated by the Tribal Court or a court of competent jurisdiction, or until the guardian is legally discharged. The guardian shall also have the authority to consent to the medical care and treatment of the child. The Tribal Court may grant visitation to the parents and the child's extended family under the terms and conditions the Tribal Court deems to be in the best interests of the child. The guardian shall not have the authority, without the express written consent of the Tribal Court, to use or dispose of any real or personal property of the child in any manner.

(c) Any parental support obligation existing prior to the effective date of the Tribal Court's order shall not be severed or terminated and such funds shall be used by the guardian solely for the support and education of child.

Sec. 10.18.310. Dependent adult persons.

(a) In the case of dependent adult persons, if after a full hearing and examination upon such petition, and upon further proof by the certificate of a qualified physician showing that any person is an elder or dependent adult as defined in this Code, it appears to the Tribal Court that the person in question is not capable of taking care of themselves and of managing their property, the Tribal Court shall make written findings and appoint a guardian of the person and estate within the powers and duties specified in this Chapter.

(b) Every guardian of an elder or dependent adult person appointed as provided herein has the care and custody of the person of the elder or dependent adult and the management of their estate until such guardian is legally discharged.

(c) A person who has been declared a dependent adult or the guardian, or any relative of such person within the third degree or any friend, may apply by petition to the Tribal Court to have the fact of their restoration to capacity judicially determined. The petition shall be verified and shall state that such a person is then competent and able to care for themselves and manage their property. The Tribal Court shall require notice to be given of a hearing upon said petition at some date after said petition has been filed; and at the hearing upon said petition, witnesses shall be examined and a determination made by the court as to whether the petition should be granted and the dependent adult person be declared competent and capable of taking care of themselves and managing their property, their restoration to capacity shall be adjudged and the guardianship of such person, if such person shall not be a child, shall cease.



Sec. 10.18.320. Removal of a guardian.

The Tribal Court may remove a guardian if the guardian is no longer qualified, if removal is in the best interests of the child, elder, or dependent adult, if the guardian will not or cannot meet their obligations to the child, elder, or dependent adult they represent and that their continued appointment will jeopardize the interests that they were appointed to represent. The Tribal Court may appoint a successor guardian and require the guardian to deliver to the successor all property of the child, elder, or dependent adult.

Sec. 10.18.330. Termination of guardianship.

(a) A temporary guardianship may be terminated upon the Tribal Court's determination that it is in the best interests of the child, elder, or dependent adult to change custody from the guardian to a new guardian or to return the child to the child's parent.

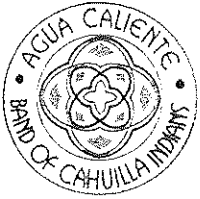
(b) A permanent guardianship may be terminated upon the Tribal Court's determination of the unsuitability of the permanent guardian or upon satisfactory evidence of the competency or suitability of the parents when the ward is an Indian child.

(c) Upon motion of any person, or the Tribe, the Tribal Court may provide notice and a hearing on whether to terminate guardianship. Grounds for termination shall include, but not be limited to, personal use by the guardian of the assets of the ward, failure to provide a reasonable level of care for the ward, or the marriage of a child ward, or that reunification with the parents is in the best interests of the child. Termination of the guardianship shall not affect, in any way, the right to or distribution of that child's, elder's, or dependent adult person's per capita payment to that child, elder, or dependent adult as permitted by the Amended Tribal Gaming Revenue Allocation Plan or successor plan as may be established in the future.

(d) Guardianship shall terminate automatically upon a child reaching eighteen (18) years of age, upon an elder or dependent adult being adjudged by the Tribal Court to have regained competence and the ability to care for themselves and manage their property or upon the expiration of the terms of the guardianship stated in the Tribal Court order. The guardianship may also terminate if the Tribal Court determines that the guardianship is no longer necessary.

Sec. 10.18.340. Review of guardianship.

The status of all persons who have been placed with a guardian pursuant to this Code shall be reviewed by the Tribal Court at least once a year, or as otherwise ordered by the Tribal Court. Whenever a guardian of the estate has been appointed, the guardian shall submit a yearly accounting regarding the guardian's use of the property to the Tribal Court for review and approval or as otherwise ordered by the Tribal Court.



Sec. 10.18.350. Guardianship records.

The Clerk of the Tribal Court 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 Clerk of the Tribal Court.

Sec.10.18.360. Finality.

All judgments of the Tribal Court shall be final, and shall be in writing, signed by the Tribal Court judge.

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.

A handwritten signature in blue ink, appearing to read "Reid D. Milanovich".

Reid D. Milanovich, Chairman

A handwritten signature in blue ink, appearing to read "Candace C. Patencio".

Candace C. Patencio, Vice Chairman

A handwritten signature in blue ink, appearing to read "Savana R. Saubel".

Savana R. Saubel, Secretary-Treasurer

A handwritten signature in blue ink, appearing to read "John R. Preckwinkle III".

John R. Preckwinkle III, Member

A handwritten signature in blue ink, appearing to read "Virginia Siva".

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 4th 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.

A handwritten signature in blue ink, appearing to read "Savana R. Saubel".

Savana R. Saubel, Secretary-Treasurer