

## **Title 8 – Juveniles**

### **Chapter 10 – Adoption**

**Sec.**

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#### **Legislative History**

**Enacted:**

Juvenile Code, Ord. 170 (6/30/03), BIA (7/3/03).

**Repealed or Superseded:**

Juvenile Code, Ord. 68 (12/89), Enacting Res. 89-12-98 (repealing Ord. 40).  
Youth Code, Ord. 40 (2/8/83), Enacting Res. 83-2-20, BIA (rescinded 5/5/83, approved 6/25/83) (repealing all previous youth ordinances).  
Law and Order Code, Ord. 7, (3/23/38), BIA (3/24/38) (Chapter III, Section 3. Adoption of Children).

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**8-10.010      Consent to Adopt.**

- (A)    Written consent to an adoption is required from:
- (1)    The guardian, or custodian (for example, a child placement agency that has custody of the youth), if empowered to consent;
  - (2)    The Court, if the guardian or custodian is not empowered to consent;  
and
  - (3)    The youth, if he or she is fourteen (14) years of age or older.
- (B)    Written consent to an adoption is also required from the biological or adoptive mother and father unless such person's parental rights have been terminated either voluntarily or involuntarily.

- (C) Written consent to an adoption must conform to all the requirements of Section 8-09.050 of this Title in order to be a valid consent.
- (D) Written consent to an adoption cannot be withdrawn after the entry of an order of adoption, except consent may be withdrawn up to one (1) year from the date of the final order of adoption upon showing at a hearing before the Court that the consent was obtained by fraud, duress or coercion.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

**8-10.020      Petition to Adopt.**

- (A) An adoption hearing under this section shall be initiated by a petition for adoption filed with the Court.
- (B) The petition shall state:
  - (1) The name, date of birth and Indian status of the youth to be adopted;
  - (2) The name to be given to the youth to be adopted;
  - (3) The name, date of birth, place, and duration of residence, and Indian status of the petitioner;
  - (4) The names and addresses if known, of all persons whose consent to the adoption is required;
  - (5) A description of all previous court proceedings involving the care or custody of the youth along with copies of all court orders, including orders terminating parental rights; and
  - (6) The reasons the petitioner(s) desires to adopt the youth.
- (C) The petitioner(s) shall sign the petition before a notary public.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

**8-10.030      Pre-Adoption Reports.**

- (A) The petitioner(s) shall arrange to have a pre-adoption report prepared by the Family Services Representative, the Department of Social and Health Services, or another professional who is qualified to prepare such report. The adoption report shall be in writing and contain the professional opinions of all

persons consulted. The agency preparing the report shall conduct a complete home study including all information concerning:

- (1) The physical and mental condition of the youth, petitioner(s) and person's living in the petitioner's home;
  - (2) The circumstances of the voluntary or involuntary termination of the parent's rights to the youth or of the parent's death;
  - (3) The home environment, family life, access to health services, and resources of the petitioner(s);
  - (4) The youth's and petitioner's cultural heritage and tribal status;
  - (5) The marital status of the petitioner(s);
  - (6) The names and ages of the petitioner's children and of any other persons residing with the petitioner(s);
  - (7) Information from health, education, and social service personnel who have had prior professional contacts with the youth and petitioner(s);
  - (8) Criminal records, if any, of the petitioner(s) shall be requested from state and tribal law enforcement authorities;
  - (9) Any evidence of alcohol and drug abuse in petitioner's household; and
  - (10) Any other facts and circumstances relating to whether or not the adoption should be granted.
- (B) The report shall be filed in the Court and served on all parties.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

#### **8-10.040 Notice of Adoption Hearing.**

Upon receipt of the pre-adoption report, the Court shall schedule an adoption hearing. The hearing shall take place no more than sixty (60) days from the date the pre-adoption report is filed with the Court. The Court shall cause all parties and the Family Services Representative to be given notice of the hearing at least ten (10) days prior to the hearing date.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

**8-10.050 Enrollment Prior to Adoption.**

If a youth is not enrolled but is eligible for membership in an Indian Tribe, the Family Services Representative shall assist in making application for membership or enrollment of the youth. If an objection is filed, the Court shall set the matter for hearing, notify the parent(s), and make a determination based on the best interest of the youth.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

**8-10.060 Adoption Hearing and Placement Preferences.**

- (A) An adoption hearing shall be conducted to determine if it is in the best interests of the youth to be placed with the petitioners.
- (B) In determining the best interest of the youth, the Court shall examine the:
  - (1) Validity of the written consent;
  - (2) Termination of parental rights orders;
  - (3) Length of time the youth may have been a ward of the Court;
  - (4) Special conditions of the youth;
  - (5) Parental communication with the youth;
  - (6) Youth's consent to adoption if he or she is fourteen (14) years of age or older; and
  - (7) Pre-adoption reports.
- (C) The preference for placement in an adoption of a youth shall be:
  - (1) Extended family member;
  - (2) A member or person eligible for membership in the Swinomish Indian Tribal Community;
  - (3) A member of another Indian Tribe; and
  - (4) If this order of preference cannot be met, for good cause shown, then placement with any person who has knowledge of and a desire to foster the youth's tribal affiliation and special needs.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

**8-10.070 Visitation.**

The adoptive parents shall have the exclusive right and power to decide the terms, if any, of visitation by any person with the youth. However, adoptive parents are encouraged to give the youth the opportunity to know his or her biological family when the youth is of a suitable age.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

**8-10.080 Effect of Decree of Adoption.**

A decree of adoption has the following effect: it creates the relationship between the adopted youth and the petitioner(s) and all relatives of the petitioner(s) that would have existed if the youth were a legitimate blood descendant of the petitioner(s). This relationship shall be created for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after entry of the adoption decree, that do not expressly exclude an adopted person by their terms. The decree does not override any tribal enrollment laws or requirements. If a Swinomish tribal member's only heir is a Swinomish member who had been adopted, that adopted member shall be considered a legal heir to avoid the escheat of the decedent's property.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

**8-10.090 Adoption Records.**

All records, reports, proceedings, and orders in adoption cases are confidential and shall not be available for release or inspection except by Court order upon good cause shown. The Court may order release of the records as follows:

- (A) The Bureau of Indian Affairs may have access to such information as is necessary to protect inheritance rights or enrollment status of the adopted person (and his or her descendants);
- (B) A copy of the decree of adoption may be given to the appropriate Bureau of Vital Statistics for the purpose of amending the birth certificate; and
- (C) An adopted person may petition the Court, upon reaching eighteen (18) years of age, for release of specifically requested information, such as the biological parents' name, address, and tribal status; and the names of relatives for the purpose of obtaining medical history information or to assist in making a relative placement of a child of the adopted person. Prior to the release of such information, the Court shall notify the biological family, consult with them if possible, and then make a determination whether to release the information.

The Court shall weigh the biological family's need for confidentiality and the adopted person's need for the information.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

**8-10.100 Adoption of Adults.**

The Court shall have jurisdiction to hear petitions for adoption of adults and shall be guided by the procedures in this Chapter.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).