

memorandum

DATE: May 2, 1989

REPLY TO
ATTN OF: Superintendent, Olympic Peninsula Agency

SUBJECT: Dangerous and Nuisance Building Ordinance for the Quileute Tribe

TO: Portland Area Office
ATTN: Tribal Government Services, P440

Attached are two (2) copies of the Dangerous and Nuisance Building Ordinance No. 88-1 and Tribal Resolution No. 89-A-012.

There is a need for the tribe to take action on this important issue.

Based on our review, we have approved this Ordinance.

The Area Office has ninety (90) days to approve or rescind the Superintendent's decision.

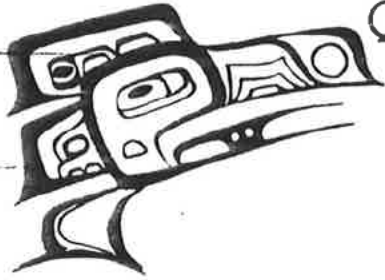


Attachment(s)

RECEIVED

MAY 5 1989

TRIBAL GOVERNMENT SERVICES
PORTLAND AREA OFFICE



QUILEUTE TRIBAL COUNCIL

POST OFFICE BOX 279
LA PUSH, WASHINGTON 98350



RESOLUTION OF THE QUILEUTE TRIBAL COUNCIL LAPUSH, WASHINGTON RESOLUTION NO. 89-A-12

WHEREAS, The Quileute Indian Tribe is an Indian Tribe organized under the Indian Reorganization Act, and the Quileute Tribal Council is the duly constituted governing body of the Quileute Indian Tribe by authority of Article III of the Constitution and Bu-Laws of the Quileute Indian Tribe approved by the Secretary of the Interior on November 11, 1936; and

WHEREAS, the ancestors of the present Quileute Tribe were a party to the Quinault Treaty of 1855, and enjoy the rights reserved to it by that Treaty; and

WHEREAS, the Quileute Tribal Council has authority to enact ordinances, and

WHEREAS, the Quileute Tribal Council deems it essential to the health, safety and economic welfare of the Quileute Indian Tribe to establish an ordinance providing for the repair or demolition of dangerous and nuisance buildings on the Quileute Reservation,

NOW, THEREFORE, BE IT RESOLVED That the Quileute Tribal Council herfeby enacts the Dangerous and Nuisance Building Ordinance, No. 88-1, and hereby designates the Chairman and Secretary to affix their signatures thereto.

QUILEUTE TRIBAL COUNCIL

Earl Beane
VICE CHAIRMAN

* * * C E R T I F I C A T I O N * * *

I, the undersigned, hereby certify that the above Resolution was adopted at a regular meeting of the Quileute Tribal Council at LaPush, Washington on the 26th day of January, 1989, by a vote of 3 for and 0 against.

Ronald N Black
Authorized Signature
Quileute Tribal Council

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DANGEROUS AND NUISANCE BUILDING ORDINANCE
ORDINANCE NO. 88-1

(a) Title. This chapter shall be known as the "Dangerous and Nuisance Building Ordinance".

(b) Purpose. It is the purpose of this ordinance to provide a method for requiring that buildings or structures which endanger the life, limb, health, morals, property, safety or welfare of the occupants or general public be repaired or demolished.

(c) Scope. The provisions of this Ordinance shall apply to all dangerous or nuisance buildings, as herein defined, which are now in existence or which may hereafter become dangerous or nuisances within the boundaries of the Quileute Indian Reservation.

I. ENFORCEMENT.

1.1 A building official, appointed by tribal council, is hereby authorized to enforce the provisions of this ordinance.

1.2 The tribal health officer and the building official are hereby authorized to make such inspections and take such actions as may be required to enforce the provisions of this ordinance.

1.3 Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the building official or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition which makes such building or premises dangerous or a nuisance as defined herein, the Building Official or his authorized representative may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Building Official by this ordinance, provided that: if such building or premises be occupied, he shall first present proper credentials and demand entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry. If such entry is refused, the building official or his authorized representative shall have recourse to every remedy provided by law to secure entry.

1.4 In the event the building official has been denied access to any building, structure or dwelling unit which he has reason to examine, he may at the time of denial of

access go to Quileute Tribal Court to obtain a search warrant for the building, structure or dwelling unit. Before a search warrant is issued by the court judge the building official must put forth in an affidavit given under

oath the ordinance upon which he is proceeding and state the circumstances upon which he is seeking the search warrant. The court judge shall examine the affidavit and determine whether the building official is proceeding and state the circumstances upon which he is seeking the search warrant. The court judge shall examine the affidavit and determine whether the building official is proceeding under an ordinance of the Quileute Indian Nation. If so, he shall issue a search warrant for search of the building, structure, or dwelling unit. No search warrant shall be required for any abandoned building that has no workable door or other obvious means of denial of entry.

1.5 All buildings or portions thereof which are determined after inspection by the Building Official to be dangerous as defined in this ordinance are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with procedures specified in this ordinance.

1.6 The Quileute Tribal Council shall make final interpretation of the provisions of this Ordinance and hear all appeals in accordance with the procedures set forth in this chapter.

II. CAUSE FOR COMMENCEMENT OF PROCEEDINGS

2.1 When the Building Official has inspected any building, structure, or dwelling unit and found that the same is dangerous or a nuisance, he shall commence proceedings to cause the repair, vacation, or demolition, if any of the following conditions exist:

A. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, in such an extent that the structural strength or stability appears unsafe.

B. Whenever any portion, member, appurtenance or ornamentation is likely to become detached, dislodged, or collapse, or is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of gale force or above.

- C. Whenever any portion of walls, partitions, or other vertical supports which lean, list, or buckle or are cracked, warped, settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is considered safe by the building official.
- D. Whenever any portion of foundations; foundation supports; fireplaces or chimneys which list, bulge, or settle; or fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety because of dilapidation, deterioration, decay, faulty construction, removal or movement or instability of any portion of the ground is likely to partially or completely collapse.
- E. Whenever any portion of floors, floor supports, ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split, buckle or settle are of insufficient size to carry imposed loads with safety.
- F. Whenever any portion has deteriorated, crumbling, or loose plaster or ineffective waterproofing of exterior walls, roof, foundations, or floors, including broken windows or doors, or lack of weather protection for exterior wall coverings, including lack of paint, or broken, rotted, split, or buckled exterior wall coverings or roof coverings.
- G. Whenever a building or structure is unsafe for the purpose for which it is being used.
- H. Whenever wiring has not been maintained and is not being used in a safe manner.
- I. Whenever any building or structure, because of dilapidation, deterioration, damage, inadequate exits; lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined to be a fire hazard.
- J. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the Health Official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

K. Whenever a nuisance exists that may prove detrimental to children whether in a building on the premises, or a public owned right-of-way, or upon an unoccupied lot. This includes any abandoned wells, shafts, basements, or excavations, abandoned refrigerators, freezers, stoves, washers, or dryers; or structurally unsound fences; or any lumber, trash, debris, or vegetation which may prove a hazard for inquisitive minors.

L. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become an attractive nuisance to children or as to enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

M. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

N. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute an attractive nuisance or hazard to the public.

111. NOTICES AND ORDERS OF BUILDING OFFICIAL.

3.1 The building official shall issue a notice and order directed to the record owner of the building. The notice and order shall contain:

(a) An address or a legal description sufficient for identification of the premises upon which the building is located:

(b) A statement that the building official has found the building to be dangerous with a brief and concise description of the conditions found to render the building dangerous under the provisions of this ordinance.

(c) A statement of the action required to be taken as determined by the building official.

(d) If the building official has determined that the building or structure must be repaired, the order shall require that the work be physically commenced within sixty days and completed in such time as the building official shall determine is reasonable under all of the circumstances.

(e) If the building official has determined that the building or structure must be vacated, the order shall require that the building or structure shall be vacated, within a time from the date of the order as determined by the building official to be reasonable.

(f) If the building official has determined that the building or structure must be demolished, the order shall require that such demolition be completed within such time as the building official shall determine is reasonable.

(g) A statement advising that the building official will order the building vacated and posted to prevent further occupancy until the work is completed, and may proceed to cause the work to be done and charge the costs thereof against the property owner.

(h) Statements advising that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the building official in writing as provided in this Ordinance; and that failure to appeal will constitute a waiver of all right to a hearing and determination of the matter.

3.2 The notice and Order, and any amended or supplemental notice and order, shall be served upon the record owner, and

posted on the property; and one copy thereof shall be served on each of the following if known to the building official or disclosed from official public records: the holder of any mortgage or deed of trust or other lien of encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the building official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him by the provisions of this section.

3.3 Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at his address as known to the building official. If no address of any person is known to the building official then a copy of the notice and order shall be mailed addressed to such person at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this Section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

3.4 Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card returned in acknowledgement of receipt by certified mail shall be affixed to the copy of the notice and retained by the building official.

3.5 The following standards shall be followed by the building official in ordering the repair, vacation or demolition of any dangerous building or structure.

A. Any building declared a dangerous building under this ordinance shall either be repaired to the satisfaction of the building official or shall be demolished at the option of the building owner.

B. If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered to be vacated.

(1) Every notice to vacate shall, in addition to being served as provided in this Ordinance be posted at or upon each exit of the building, and shall be in substantially the following form:

"DO NOT ENTER UNSAFE TO OCCUPY"

It is a misdemeanor to occupy this building, or to remove or deface this notice.

Building Official
Quileute Tribal Council

3.6 Whenever such notice is posted, the Building Official shall include a notification thereof in the order issued by him specifying the conditions which necessitate the posting. No person shall remain in or enter any building which has been posted, except that entry may be made to repair, demolish or remove such building. No person shall remove or deface any such notice after it is posted until the required repairs, demolition, or removal have been completed and certificate of occupancy issued. Any person violating this section shall be guilty of a misdemeanor.

IV. APPEAL

4.1 Any person entitled to service under this Ordinance may appeal from any notice and order of any action of the Building Official under this ordinance by filing with the Tribal Council a written appeal containing:

(a) A caption reading: "Appeal of _____ giving the names of all appellants participating in the appeal.

(b) A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order.

(c) A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.

(d) A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified, or otherwise set aside.

(e) The signatures of all parties named as appellants, and their official mailing addresses and telephone numbers.

(f) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

4.2 The appeal shall be filed within 30 days from the date of the service of such order or action of the building official; provided, however, that if the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or adjacent property and is ordered vacated and is posted in accordance with this ordinance, such appeal shall be filed within ten days from the date of the service of the notice and order of the building official.

4.3 Any appeal shall be heard at the next regular meeting of the tribal council.

4.4 Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of his/her right to an administrative hearing and adjudication of the notice and order, or any portion thereof.

4.5 Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

4.6 Except for vacation orders made pursuant to this ordinance, enforcement of any notice and order of the building official issued under this ordinance shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

V. ENFORCEMENT OF THE ORDER

5.1 After any order of the building official or the tribal council made pursuant to this ordinance shall become final, no person to whom any such order is directed shall fail, neglect, or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor.

5.2 If, after any order of the building official or tribal council made pursuant to this ordinance has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the building official may cause such person to be prosecuted under this ordinance, or institute any appropriate action to abate such building as a public nuisance.

5.3 The building official may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set out forth in the notice and order; or if the notice and order required demolition to cause the building to be sold or demolished and the materials, rubble and debris removed therefrom and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this ordinance. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

5.4 Upon receipt of an application from the person required to conform to the order and an agreement by such person that he will comply with the order if allowed additional time, the building official may, in his discretion, grant an extension of time, not to exceed an additional 120 days, within which to complete said repair, rehabilitation, or demolition, if the building official determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The building official's authority to extend time is limited to the physical repair, rehabilitation, or demolition of the premises and will not in any way affect the time to appeal his notice and order.

5.5 No person shall obstruct, impede or interfere with any officer, employee, contractor, or authorized representative of the tribe, or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated or demolished under the provision of this ordinance; or with any person to whom such building has been lawfully sold pursuant to the provisions of this ordinance; whenever such officer, employee, contractor or authorized representative, representative of the tribe, person having an interest or estate in such building or structure, or purchaser is engaged in work of repairing, vacating and repairing, or demolishing any such building, pursuant to the provisions of this Ordinance, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this ordinance.

VI. RECOVERY OF COSTS

6.1 The building official shall keep an itemized list of expenses incurred by the Tribe in the repair or demolition of any building done pursuant to the provisions of this

Ordinance. Upon completion of the work or repair or demolition, the building official shall prepare a report specifying the work done, the itemized and total cost of work, a description of the real property upon which the building or structure was located, and the names and addresses of the persons entitled to notice, and shall cause the same to be mailed to the responsible parties.

6.2 Any person interested in or affected by the proposed charge may file written protest or objections with the Tribal Council. Each such protest or objection must contain a description of the property in which the signer thereof is interested and the grounds of such protest or objection. Such protest shall be heard at the next regularly scheduled tribal council meeting.

6.3 The tribal council may make such revision, correction or modification in the charge as it may deem just. The decision of the Tribal Council on all protests or objections shall be final and conclusive.

6.4 The tribal council may direct staff or the tribal attorneys to collect all charges on behalf of the Quileute Tribe by use of all appropriate legal remedies.

6.5 All monies recovered by payment of charges shall be credited to the general fund.

VII. PENALTIES.

7.1 Any person who violates or refuses or fails to comply with any of the provisions of this Ordinance shall be guilty of a misdemeanor. Each day upon which such violation shall continue beyond the fifteenth day following notification of such violation or in case of appeal, beyond the day of the final judgment, shall constitute a separate offense. Each offense shall be subject to a fine of not more than \$100 with costs. The offender, if not an Indian resident of the Reservation, may be excluded from the Reservation until outstanding fines and costs are paid and suitable guarantees are provided against future violations.

VIII. CONFLICT OF RULES AND REGULATIONS, REPEAL, EFFECT OF PARTIAL INVALIDITY

8.1 If any section, sentence, clause or phrase of these rules and regulations conflict with any other rules and regulations, Ordinance or Code of the Quileute Tribe or the

local state or federal governments existing on the effective date of this ordinance, which establishes a lower standard for the promotion and protection of the health and safety of the people. the provisions of this ordinance shall be deemed to prevail, and such other rules and regulations, Ordinances or Codes are hereby declared to be repealed to the extent that they are in conflict with these rules and regulations. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance shall be declared invalid, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect; and, to that end, the provisions of this ordinance are declared to be severable.

IX. EFFECTIVE DATE

This ordinance shall take effect upon adoption by the Quileute Tribal Council.

PASSED BY THE QUILEUTE TRIBAL COUNCIL This 26th day of January, 1989, and signed in authentication of its passage this 26th day of January, 1989.

QUILEUTE TRIBAL COUNCIL

BY Earl P. P. P.
VICE CHAIRMAN

APPROVED:
R. P. P.
SUPERINTENDENT, O. P. A.
DATE: 5/2/89