UCHUCKLESAHT TRIBE GOVERNMENT

ENFORCEMENT ACT

UTS 16/2011

OFFICIAL CONSOLIDATION – CURRENT TO JUNE 19, 2014

This is a certified true copy of the consolidated Enforcement Act UTS 16/2011, current to June 19, 2014.

Date: July 9, 2014

Signed: Cazla Mahnse

Law Clerk

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PREAMBLE

The Uchucklesaht Tribe asserts that we have, since time immemorial, governed ourselves according to our traditions and protocols. With our inherent right to self-government recognized in the Maa-nulth Treaty and our Constitution, we have blended our traditional ways with modern-day governing systems which recognize the rule of law. In doing so, we honour our past and embrace the future, ensuring the continued existence of the Uchucklesaht Tribe as a strong political, social and cultural community.

Governing effectively requires not only enacting necessary Uchucklesaht law, but properly enforcing Uchucklesaht law. Effective enforcement of our laws honours our traditions while securing our future. For the effective enforcement of our laws, the Uchucklesaht Tribe desires a just, fair and robust framework for law enforcement for the common good of all Uchucklesaht citizens that embraces our traditions and protocols and adheres to the rule of law.

The Uchucklesaht Tribe adopts this Act based on these values.

PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Enforcement Act.

Executive oversight

1.2 The chief councillor is responsible for the executive oversight of this Act.

Application

1.3 This Act applies to offences against Uchucklesaht enactments, except to the extent that the Uchucklesaht enactment specifically provides otherwise.

Definitions

1.4 In this Act:

"applicable government" means the government of Canada, the government of British Columbia, another provincial government or an extraterritorial government;

"application" means an application made under section 6.1 for a review of a compliance notice or ticket;

"compliance notice" means a notice issued in accordance with Part 4;

"director" means the director responsible, from time to time, for the exercise of powers under the Uchucklesaht enactment to which the particular offence relates;

"discounted penalty" means the prescribed amount of the penalty payable if payment is received on or before the 14th day after the date a ticket was served in accordance with section 5.3;

"named person" means a person to whom a compliance notice or ticket is issued;

"special Uchucklesaht prosecutor" means a person appointed as a special prosecutor of the Uchucklesaht Tribe under section 2.5(a);

"surcharge penalty" means the prescribed amount payable if payment for a penalty is received on or after the 29th day after the date a ticket was served in accordance with section 5.3;

"ticket" means a ticket issued in accordance with Part 5;

"Uchucklesaht prosecutor" means a person appointed as a prosecutor of the Uchucklesaht Tribe under section 2.4(a).

PART 2 - OFFENCES

Offences generally

2.1 A person commits an offence against a Uchucklesaht enactment by

(a) doing an act forbidden under that Uchucklesaht enactment, or

(b) omitting to do any thing required under that Uchucklesaht enactment.

Penalties generally

2.2 (a) If a Uchucklesaht enactment does not specify a penalty for an offence, the following penalty applies:

(i) fine of at least $250, and not exceeding a maximum fine of $10,000 or the general limit for summary conviction offences under section 787 of the Criminal Code (Canada), whichever is greater; or

(ii) imprisonment for a term not exceeding six months.

(b) In a prosecution for an offence, the justice or court may impose all or part of the penalties applicable for the offence, together with the costs of the prosecution.

Prosecution of offences

2.3 (a) Subject to subsection (b), the chief administrative officer may, on reasonable and probable grounds, lay an information on behalf of the Uchucklesaht Tribe that a person has committed or is suspected of having committed an offence.

(b) The chief administrative officer may only lay an information that has been approved by the Uchucklesaht prosecutor under section 2.4(b).

Uchucklesaht prosecutor

2.4 (a) The Executive must appoint a Uchucklesaht prosecutor to conduct prosecutions of offences and any appeals arising from prosecutions of offences.

(b) The Uchucklesaht prosecutor must review any proposed information contemplated in section 2.3(a) and may approve the information to be laid by the chief administrative officer with any necessary changes that the Uchucklesaht prosecutor sees fit.

(c) In the Uchucklesaht prosecutor's review of an information and the prosecution of an offence, he or she must consider:

(i) all relevant information and documents relating to the prosecution,

(ii) whether there is a substantial likelihood of conviction of the offence,

(iii) the seriousness of the offence,

(iv) the values of the Uchucklesaht Tribe,

(v) the integrity and independence of the Uchucklesaht Tribe enforcement system, and

(vi) the public interest.

(d) The Uchucklesaht prosecutor must perform his or her duties and exercise his or her powers in a manner consistent with the principle of prosecutorial independence and the overall authority and role of a prosecutor in the administration of justice in British Columbia.

Special Uchucklesaht prosecutor

2.5 (a) The Executive may appoint a special Uchucklesaht prosecutor where there is a significant possibility of a perceived or real improper influence on the prosecution process.

(b) A special Uchucklesaht prosecutor must perform the same duties and may exercise the same powers as a Uchucklesaht prosecutor.

Application of Offence Act (British Columbia) and Criminal Code (Canada)

2.6 (a) For certainty, the summary conviction proceedings of the Offence Act (British Columbia) apply to the prosecution of an offence under a Uchucklesaht enactment.

(b) If, in any proceeding, matter or thing to which this Act applies, partial provision or no express provision has been made in this Act or the applicable provisions of the Offence Act (British Columbia), the provisions of the Criminal Code (Canada) relating to offences publishable on summary conviction, including the provisions in Part XV respecting search warrants, apply to matters under this Act, with the necessary changes required and so far as applicable.

(c) The Criminal Code (Canada) provisions referred to in subsection (b) apply to the extent that they are not inconsistent with this Act.

PART 3 - ENFORCEMENT OFFICERS

Appointment of enforcement officers

3.1 The Executive may, by Order, appoint enforcement officers to enforce Uchucklesaht enactments and preserve and maintain public peace.

Authority of enforcement officers

3.2 (a) Without otherwise limiting the enforcement officer's powers at law, the Executive may, by Order, limit the authority of an enforcement officer appointed under section 3.1 to the enforcement of a specific Uchucklesaht enactment.

(b) Subject to subsection (a) and without limiting the enforcement officer's powers at law, an enforcement officer appointed under section 3.1 is authorized to do the following for the purpose of performing his or her duties or exercising his or her powers:

(i) issue compliance notices;

(ii) issue tickets;

(iii) at any reasonable time, enter

(A) land or unoccupied premises, or

(B) a dwelling with the consent of the occupier or if authorized by a Uchucklesaht enactment;

(iv) inspect land, property or records;

(v) take or make copies of any property or records;

(vi) make any reasonable inspection, investigation or inquiry necessary to determine if a Uchucklesaht enactment, or a compliance notice, ticket, or other instrument issued under this or any other Uchucklesaht enactment, has been complied with or contravened, or an offence is being committed or has been committed;

(vii) provide the chief administrative officer with information sufficient for the chief administrative officer to lay an information under section 2.3;

(viii) remove trespassers from Uchucklesaht lands; and

(ix) arrest without warrant a person whom the enforcement officer finds committing a criminal offence on or in relation to Uchucklesaht lands; and

(x) perform any other duties and exercise any other powers assigned or delegated to the enforcement officer

(A) under this or any other Uchucklesaht enactment, or

(B) by the Executive.

Enforcement officer must show identification

3.3 An enforcement officer must, upon request, show appropriate identification confirming his or her credentials as an enforcement officer.

PART 4 - COMPLIANCE NOTICES

Issuing compliance notice

4.1 (a) If an enforcement officer has reasonable grounds to believe that a person is committing an offence or has committed an offence, the enforcement officer may issue a compliance notice in the prescribed form to that person.

(b) A compliance notice must be issued to a named person unless it is issued for an offence involving a vehicle, in which case it must also be issued to

(i) the vehicle's licence plate, or

(ii) the vehicle's identification number, temporary operation permit or interim permit under the Motor Vehicle Act (British Columbia) or other applicable law.

(c) If a compliance notice is issued under subsection (b), the compliance notice is deemed to have been issued to each registered owner of the vehicle as contained in the records of the applicable government.

(d) Each registered owner of a vehicle referred to in subsection (c) is deemed to be a named person.

Content of compliance notice

4.2 (a) A compliance notice must require the named person to do whatever is necessary to stop or rectify the offence.

(b) A compliance notice must contain the following information:

(i) the particulars of the offence in sufficient detail to permit the named person to identify it;

(ii) the date or time period within which the named person must comply with the requirements set out in the compliance notice under subsection (a);

(iii) the date and time the compliance notice is issued;

(iv) the name and signature of the enforcement officer who issued the compliance notice;

(v) how to apply for a review of the compliance notice; and

(vi) any other prescribed information.

(c) A compliance notice may state that if the named person does not comply with the requirements set out in the compliance notice and rectify the offence, another person authorized by the Executive may take action to rectify the offence at the expense of the named person.

Serving compliance notice

4.3 (a) A compliance notice must be delivered in accordance with Uchucklesaht law to each named person.

(b) If a compliance notice relates to an offence involving a vehicle, that compliance notice must be delivered to the address of each registered owner of the vehicle as shown in the records of the applicable government.

(c) Despite section 4.2(b) and subsection (a), a compliance notice may be delivered verbally by the enforcement officer reading the applicable section of the Uchucklesaht enactment that regulates, controls or prohibits the action or activity on

(i) Uchucklesaht lands, or

(ii) Uchucklesaht foreshore,

to the named person if the offence is, or may be, a nuisance, trespass, danger to public health or threat to public order, peace or safety that requires immediate compliance.

Compliance notice form

4.4 A compliance notice may be completed, recorded, issued and stored

(a) in electronic format by electronic means, or

(b) by another means that allows the compliance notice to be reproduced in an understandable form.

Complying with or disputing compliance notice

4.5 (a) Subject to subsection (b) and the period of time specified in the compliance notice under section 4.2(b)(ii), a named person must, within 14 days after the compliance notice was served on that named person in accordance with section 4.3,

(i) comply with the requirements in the compliance notice, or

(ii) apply for a review of the compliance notice in accordance with section 6.1.

(b) The director may extend the time limit established under subsection (a), upon request by the named person or his or her authorized representative, for

(i) a period up to 30 days, or

(ii) upon the approval of the Executive, a period longer than 30 days,

if the named person, acting in good faith and through absence, accident, illness or other cause beyond the person's reasonable control, is or was unable to respond to the compliance notice in accordance with subsection (a).

When failure to serve compliance notice does not invalidate proceeding

4.6 If a compliance notice is not served in accordance with section 4.3, a proceeding or an action in relation to the compliance notice is not invalidated if

(a) the content of the compliance notice was known by the named person within the time allowed for service,

(b) the named person consents, or

(c) the failure to serve in accordance with section 4.3 does not result in any substantial injustice.

Executive may authorize measures

4.7 (a) Subject to Part 6, the Executive may direct or authorize whatever action or measures are necessary to stop or rectify an offence or to prevent a re-occurrence of that offence if

(i) the named person has been served with the compliance notice in accordance with section 4.3,

(ii) the compliance notice included a description of the action or measures a person authorized by the Executive would take if the compliance notice was not followed,

(iii) the named person has not complied with the requirements of the compliance notice, and

(iv) the named person has not applied for a review of the compliance notice in accordance with section 6.1 within the time period under section 4.5, or

(v) the compliance notice has been reviewed under section 6.1 or 6.2 and after completing the review, the director or the Administrative Decisions Review Board has not reversed the compliance notice.

(b) If a named person under subsection (a) has not put or maintained premises in a clean or safe condition as required in a compliance notice, the Executive may, by Order, require the closure of the premises.

(c) The expenses of an action or the measures authorized by the Executive under this section are a debt owing by the named person to the Uchucklesaht Tribe payable on demand within 14 days, if that demand is delivered in accordance with Uchucklesaht law, and may be collected by the Uchucklesaht Tribe in accordance with sections 4.6 to 4.11 of the Financial Administration Act.

(d) If the Executive is authorized by a Uchucklesaht enactment to sell all or a part of any property that has been removed to stop or rectify an offence under this section, the proceeds of the sale must be used to pay the expenses and costs of the removal and any excess proceeds must be paid to the person entitled to them.

Joint and several liability

4.8 The obligations arising from a compliance notice are joint and several as between the named persons.

Limitation period for compliance notices

4.9 A compliance notice for an offence must not be issued more than 12 months after the offence in relation to which the compliance notice is issued is alleged to have been committed.

PART 5 - TICKETS

Issuing ticket

5.1 (a) If an enforcement officer has reasonable grounds to believe that a person is committing an offence or has committed an offence against a Uchucklesaht enactment and a Uchucklesaht enactment allows ticketing for that offence, the enforcement officer may issue a ticket in the prescribed form to that person.

(b) A ticket must be issued to a named person unless it is issued for an offence involving a vehicle, in which case it must also be issued to

(i) the vehicle's licence plate, or

(ii) the vehicle's identification number, temporary operation permit or interim permit under the Motor Vehicle Act (British Columbia) or other applicable law.

(c) If a ticket is issued under subsection (b), the ticket is deemed to have been issued to each registered owner of the vehicle as contained in the records of the applicable government.

(d) Each registered owner of a vehicle referred to in subsection (c) is deemed to be a named person.

Content of ticket

5.2 A ticket must contain the following information:

(a) the particulars of the offence in sufficient detail to permit the named person to identify it;

(b) the penalty, discounted penalty and surcharge penalty;

(c) the methods of paying the penalty;

(d) the date and time the ticket is issued;

(e) the name and signature of the enforcement officer who issued the ticket;

(f) how to apply for a review of the ticket; and

(g) any other prescribed information.

Serving ticket

5.3 (a) A ticket must be delivered in accordance with Uchucklesaht law to each named person.

(b) Subject to subsection (c), if a ticket relates to an offence involving a vehicle, that ticket must be delivered to the address of each registered owner of the vehicle as contained in the records of the applicable government.

(c) If a ticket is for a parking offence, that ticket may be served on the named person by affixing the ticket to the vehicle in a conspicuous place or personally providing a copy of the ticket to the person having care and control of the vehicle.

(d) Despite section 5.2 and subsection (a), a ticket may be delivered verbally by the enforcement officer reading the applicable section of the Uchucklesaht enactment that regulates, controls or prohibits the action or activity on

(i) Uchucklesaht lands, or

(ii) Uchucklesaht foreshore,

to the named person if the offence is, or may be, a nuisance, trespass, danger to public health or threat to public order, peace or safety that requires immediate compliance.

Ticket form

5.4 A ticket may be completed, recorded, issued and stored

(a) in electronic format by electronic means, or

(b) by another means that allows the ticket to be reproduced in an understandable form.

Paying or disputing ticket

5.5 (a) Subject to subsection (b), a named person must, within 14 days after the ticket was served on that named person in accordance with section 5.3,

(i) pay the penalty stated in the ticket to the Uchucklesaht Tribe in the manner stated in the ticket, or

(ii) apply for a review of the ticket in accordance with section 6.1.

(b) The director may extend the time limit established under subsection (a), upon request by the named person or his or her authorized representative, for

(i) a period of up to 30 days, or

(ii) upon the approval of the Executive, a period longer than 30 days,

if the named person, acting in good faith and through absence, accident, illness or other cause beyond the person's reasonable control is or was unable to respond to the ticket in accordance with subsection (a).

Failure to respond to ticket

5.6 If a named person does not respond to a ticket in accordance with section 5.5, the penalty set out in the ticket is immediately due and payable by the named person to the Uchucklesaht Tribe in the manner indicated on the ticket and may be collected by the Uchucklesaht Tribe in accordance with sections 4.6 to 4.11 of the Financial Administration Act.

When failure to serve ticket does not invalidate proceeding

5.7 If a ticket is not served in accordance with section 5.3, a proceeding or an action in relation to the ticket is not invalidated if

(a) the content of the ticket was known by the named person within the time allowed for service,

(b) the named person consents, or

(c) the failure to serve in accordance with section 5.3 does not result in any substantial injustice.

Joint and several liability

5.8 The obligations arising from a ticket are joint and several as between the named persons.

Limitation period for tickets

5.9 A ticket for an offence must not be issued more than six months after the offence in relation to which the ticket is issued is alleged to have been committed.

PART 6 - REVIEW OF COMPLIANCE NOTICES AND TICKETS

Review by chief administrative officer

6.1 (a) A named person may apply to the chief administrative officer for a review of the compliance notice or ticket, as the case may be, by filing an application in the prescribed form with the chief administrative officer.

(b) An application must

(i) identify the compliance notice or ticket that is the subject of the application, and

(ii) give the full legal name of the applicant, an address to which documents may be delivered to the applicant and a telephone number where the applicant may be contacted.

(c) The chief administrative officer must, within seven days after receiving an application, deliver a copy of the application to any other named person.

(d) The chief administrative officer may gather the information he or she reasonably requires for the review of the compliance notice or ticket.

(e) After delivering a copy of the application to any other named person under subsection (c), the chief administrative officer must expeditiously review the compliance notice or ticket and must, by directive,

(i) reverse or modify the compliance notice or ticket with or without conditions, or

(ii) confirm the compliance notice or ticket.

(f) As soon as practicable after completion of the review, the chief administrative officer must deliver in accordance with Uchucklesaht law to the applicant and any other named person written notice of

(i) the directive that the chief administrative officer made under subsection (e), and

(ii) the right to request a review of that directive in accordance with section 6.2.

Review by Administrative Decisions Review Board

6.2 (a) No later than 10 days after receipt of the written notice under section 6.1(f), the applicant or any other named person may request a review of the directive made under section 6.1(e) under the Administrative Decisions Review Act.

(b) The grounds for review under this section are that the directive is inconsistent with this Act or the Uchucklesaht enactment to which the compliance notice or ticket relates.

(c) The applicant and any other named person are deemed to be parties to the review under the Administrative Decisions Review Act.

(d) After conducting a review, the Administrative Decisions Review Board may

(i) dismiss the review request, or

(ii) if it determines that the directive is inconsistent with this Act or the Uchucklesaht enactment to which the compliance notice or ticket relates, cancel the compliance notice or ticket.

PART 7 - GENERAL PROVISIONS

Regulations

7.1 (a) The Executive may make regulations which it considers necessary or advisable for the purposes of this Act.

(b) Without limiting subsection (a), the Executive may make regulations in relation to the duties and powers of enforcement officers.

(c) If a ticket may be issued for an offence, the Executive must, by regulation, establish, in relation to that offence, the amount of

(i) the penalty for each offence,

(ii) the discounted penalty, and

(iii) the surcharge penalty.

Non-compliance

7.2 Every person who fails to comply with a compliance notice, ticket or directive under section 6.1(e) commits an offence and is liable, on summary conviction, to a fine not exceeding $10,000 or imprisonment for a term not exceeding six months.

Commencement

7.3 This Act comes into force on the Maa-nulth Treaty effective date.

LEGISLATIVE HISTORY

Enforcement Act UTS 16, 2011 enacted April 1, 2011

Amendments

Section	Amendment	In Force
1.4	UTS 40/2014, s. 2.2	June 19, 2014
2.6	UTS 40/2014, s. 2.3	June 19, 2014
4.3(a)	UTS 40/2014, s. 2.4(a)	June 19, 2014
4.3(c)	UTS 40/2014, s. 2.4(b)	June 19, 2014
4.5(a)	UTS 40/2014, s. 2.5	June 19, 2014
4.7(c)	UTS 40/2014, s. 2.6	June 19, 2014
5.1(a)	UTS 40/2014, s. 2.7	June 19, 2014
5.2(b)	UTS 40/2014, s. 2.8	June 19, 2014
5.3(a)	UTS 40/2014, s. 2.9(a)	June 19, 2014
5.3(d)	UTS 40/2014, s. 2.9(b)	June 19, 2014
5.4	UTS 40/2014, s. 2.10	June 19, 2014
5.5(a)	UTS 40/2014, s. 2.11	June 19, 2014
5.6	UTS 40/2014, s. 2.12	June 19, 2014
6.1(a)	UTS 40/2014, s. 2.13(a)	June 19, 2014
6.1(e)	UTS 40/2014, s. 2.13(b)	June 19, 2014
6.1(f)	UTS 40/2014, s. 2.13(c)	June 19, 2014
7.1(c)	UTS 40/2014, s. 2.14	June 19, 2014
6.1	UTS 40/2014, s. 2.15(a)	June 19, 2014
6.2	UTS 40/2014, s. 2.15(a)	June 19, 2014
7.2	UTS 40/2014, s. 2.15(a)	June 19, 2014
3.1	UTS 40/2014, s. 2.15(b)	June 19, 2014
3.2(a)	UTS 40/2014, s. 2.15(b)	June 19, 2014
4.7(b)	UTS 40/2014, s. 2.15(b)	June 19, 2014

Amending Acts:

UTS 40/2014 Enforcement Framework Amendment Act No. 2 enacted June 19, 2014

Regulations:

UTR 18/2014 Compliance Notice and Ticket Regulation enacted July 2, 2014