

**ORDINANCE
OF THE GOVERNING BODY OF
THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION**

**FLATHEAD INDIAN RESERVATION RESEARCH PROTECTION
ORDINANCE**

NOW THEREFORE BE IT ENACTED by the Tribal Council of the Confederated Salish and Kootenai Tribes the following ordinance to be known as the "Flathead Indian Reservation Research Protection Ordinance."

Section 1. RECITALS.

- (a) The Confederated Salish and Kootenai Tribes ("Tribes"), by and through the Tribal Council, has the inherent sovereign authority to regulate the conduct and activities on all lands within the jurisdiction of the Tribes, and as expressly established in the Constitution of the Tribes ("Constitution"), to promulgate, adopt, and enact ordinances for the control and regulation on all lands within the jurisdiction of the Tribes, and to protect the health, security, and general welfare of the Tribes and its citizens; and,
- (b) The Tribal Council has determined that all research, including human subject research conducted within the Flathead Indian Reservation and involving the Tribes' citizens, has the potential to cause harm (regardless of researcher intent or belief) and should therefore be strictly regulated.

SECTION 2. AUTHORITY

- (a) This Ordinance is enacted pursuant to:
 - (1) the Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation (hereinafter "Tribes" and/or "CSKT"), Article VI, Section 1, Subsections (a), (l), (n), (t) and (u), approved by the Secretary of the Interior, October 28, 1935.
 - (2) the Tribes' inherent tribal authority to regulate conduct that poses a serious threat to the health, security and welfare of the Tribes, including authority to regulate conduct that poses a serious threat to our collective and individual cultural heritage, traditional knowledge, and traditional cultural expressions.
 - (3) the provisions of Section 46.114(b)(2)(i) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 46.114(b)(2)(i)).

SECTION 3. FINDINGS AND POLICY.

- (a) The Confederated Salish and Kootenai Tribes retain the right to review all research proposed to occur within the borders of the Flathead Indian Reservation.
- (b) This ordinance is intended as a placeholder until the Tribal Council adopts a more detailed ordinance. Until that time, the supervising Institutional Review Board for the Flathead Indian Reservation should be the Salish Kootenai College Institutional Review Board.
- (c) The research review process established under this ordinance is developed as a mechanism to: safeguard the health and welfare of Tribal citizens, descendants, and Reservation residents; improve relations between the Tribes and scientists/researchers; promote collaboration within the framework of mutual respect, equity, and empowerment; and maximize the benefits and reduce any risks to the Tribes
- (d) The natural and cultural landscapes, including wildlife, flora, fauna, waters, and biogenetics, among others, located on aboriginal and present day Tribal lands are of central importance to the Tribes.
- (e) The Tribal Council has the right to maintain, control, protect and develop the Tribes' cultural heritage, traditional knowledge, and traditional cultural expressions, as well as the manifestations of our sciences, technologies, and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games, and visual and performing arts. The Tribal Council also has the right to maintain, control, protect and develop the Tribes' intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
- (f) The integrity and orientation of past, present, and future generations of the Tribes are founded upon a unique and invaluable cultural, historical, and environmental ethic which defines and perpetuates an identity, language, history, and value system involving an irrevocable cultural attachment to the native landscape ecology, and the human inseparability and interdependence with other species and biological diversity.
- (g) The Tribes are the exclusive owner of the Tribes' indigenous traditional knowledge.
- (h) Indigenous knowledge, cultural and biogenetic resources, and intellectual property rights have been and continue to be damaged, destroyed, stolen, and misappropriated, both on and off the Reservation. Members of indigenous peoples have often been the subjects of human research in the past, many times with

virtually no benefits returning to them from such research and sometimes resulting in harms to such peoples.

- (i) It is in the Tribes' best interests to establish a research review mechanism to: prevent continued abuses; protect the people's traditional knowledge and properties; and ensure our rights to continue to practice traditional lifeways for our long-term survival.

SECTION 4. PURPOSE.

(a) The purposes of this Act are to:

- (1) protect the current and future people, culture, and natural resources of the Tribes from unauthorized scientific research;
- (2) reduce any adverse effects of human subject research and related activities on the Tribes and our People;
- (3) ensure that researchers recognize the Tribes' control of research activities on the Flathead Indian Reservation and to establish, and provide a statutory basis for, a process to review and govern any research undertaken on the Reservation; and
- (4) clarify that, including for purposes of 45 C.F.R. § 46.114(b)(2)(i), any research conducted on the Reservation must first be authorized by the Salish Kootenai College Institutional Review Board, regardless of whether such research has been approved by any other Institutional Review Board.

(b) All research activities conducted on the Reservation must comply with this Act.

(c) The Tribes reserve our right, through our inherent sovereign authority and police power, to exclude individuals from the Reservation and to grant or deny permission and access for any research activities conducted within the exterior boundaries of the Reservation.

(d) The Tribes find that it is in our best interests to establish and identify a research review and authorization mechanism to prevent abuses and to protect the health and welfare of Tribal citizens and Reservation residents.

SECTION 5. DEFINITIONS

For purposes of this Act:

- (a) "Flathead Indian Reservation" means all land within the exterior boundaries of the Indian reservation reserved under the Treaty of Hellgate between the United States and the Flathead, Kootenay, and Upper Pend d'Oreilles Indians, concluded at Hell Gate on July 16, 1855 (12 Stat. 975), notwithstanding the issuance of any patent on the Reservation, and including any right-of-way through the Reservation.
- (b) "Institutional Review Board" means an institutional review board established in accord with, and for the purposes expressed in, federal regulations and policy as contained in 45 C.F.R. Part 46.
- (c) "IRB" means Institutional Review Board.
- (d) "Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities.
- (e) "Reservation" means the Flathead Indian Reservation (*see* definition of "Flathead Indian Reservation").
- (f) "Salish Kootenai College Institutional Review Board" means that Board operating under authorization of the U.S. Department of Health & Human Services, Office of Human Research Protections, pursuant to 45 C.F.R. Part 46, Subpart A (also referred to as the "Common Rule"), and established by Salish Kootenai College under SKC Policy 1000.0, which authorizes the SKC IRB to review research done by SKC faculty, staff, and students as well as research conducted on the SKC campus by external researchers. Additionally, the SKC IRB reviews research to be conducted on the Flathead Indian Reservation at the request of the Confederated Salish & Kootenai Tribal Council or one of its departments.
- (g) "SKC IRB" means the Salish Kootenai College Institutional Review Board.
- (h) "Tribal Citizen" means an individual who is an enrolled citizen (member) of the Confederated Salish and Kootenai Tribes.
- (i) "Tribes" means the Confederated Salish and Kootenai Tribes.

SECTION 6. REVIEW OF RESEARCH PROPOSALS


- (a) All research, including, but not limited to, research involving human subjects, biological subjects, biogenetic resources, and/or traditional indigenous intellectual property, proposed to be conducted on the

Reservation shall be approved by the Salish Kootenai College Institutional Review Board (SKC IRB).

- (b) Until such time as a permanent, successor ordinance is enacted, the Salish Kootenai College Institutional Review Board shall provide annual reports to the Tribal Council.

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

The foregoing ordinance was adopted by the Tribal Council on the 28th day of January, 2020, by a vote of 9 for; 0 opposed; and 0 not voting, pursuant to authority vested in it by Article VI, Section 1 (a), (n) and (u) of the Tribes' Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.


Chairwoman, Tribal Council

ATTEST:


Tribal Secretary