

**Pala Band of Mission Indians**  
**Ordinance No. 21**  
**Child Welfare**



**Amended**  
**April 9, 2014**



**PALA BAND OF  
MISSION INDIANS**

PMB 50, 35008 Pala Temecula Road  
Pala, CA 92059  
Phone 760-891-3500 | Fax 760-742-1411

**Ordinance No. 21**  
**Child Welfare Ordinance**  
**CHAPTER ONE**  
**JURISDICTION AND DEFINITIONS**

**Section 1 Purpose**

A. Policy. Children of, and under the jurisdiction of, the Pala Band of Mission Indians ("Pala Band") are an extremely valuable tribal resource. The welfare of our tribal children is of the foremost importance. Our children must receive the care and guidance necessary to allow them to become productive members of our Tribe and society in general.

B. Purpose. The purpose of this Child Welfare Ordinance is as follows:

1. To allow the Pala Band to take an active role in providing for the health, safety, and welfare of children within its jurisdiction;
2. To preserve and strengthen family ties whenever possible, including improvement of home and environment;
3. To protect and preserve tribal heritage and cultural identity of the children;
4. To provide a non-adversarial forum for culturally appropriate resolution of child welfare issues coming before the Pala Children's Court; and
5. To ensure that other courts and agencies will fully cooperate with the Pala Band in fulfilling the purposes of this Ordinance.

**Section 2 Jurisdiction**

A. Jurisdiction of the Pala Band. The Pala Band has jurisdiction over all child protection proceedings involving Indian children and their parents under this Ordinance which involve the following:

1. Any Indian child who resides on or is domiciled within the Indian country of the Pala Band.
2. Any Indian child who is a member of, eligible for membership in, or direct descendant of the Pala Band regardless of the Indian child's domicile or residence.
3. Indian or non-Indian parents, guardians or custodians of an Indian child, and all necessary members of the household involved in any child protection proceeding governed by this Ordinance.

4. Any Indian child protection case transferred to the Children's Court pursuant to the Indian Child Welfare Act, 25 U.S.C. §1911(b). The Court, however, may decline to transfer jurisdiction under §1911(b).
5. Adoption of Indian children under the jurisdiction of the Children's Court.
6. Termination of the parental rights of an Indian or non-Indian parent of an Indian child, when said child is residing or domiciled within the Indian country of the Pala Band.

B. Nature of Jurisdiction. The jurisdiction of the Children's Court is civil in nature and includes the right to issue all orders necessary to ensure the health, safety, and welfare of children that come before the Court as well as those who have been declared to be wards of the Court. The Court has the power to impose fines, issue and enforce subpoenas and issue and enforce stay away, contempt, protection and detention orders and any other orders as appropriate.

C. Transfer of Jurisdiction. In the case of an Indian child that is not a member, eligible for membership, or a direct descendent of the Pala Band, the Children's Court may, pursuant to Chapter 4, transfer jurisdiction to the Indian child's Tribe.

### **Section 3      Definitions**

The following words and phrases, whenever used in this Ordinance, have the following meaning unless defined otherwise by Tribal ordinance or guidelines:

- A. Abandonment shall mean (1) the intentional failure to contact one's child in person, by telephone, or letter, (2) the failure to make provisions for the child's care, for an unreasonable amount of time (the Children's Court will determine what an unreasonable amount of time is); or (3) a voluntary and express declaration (written or oral) by a parent that the parent desires to abandon the child.
- B. Abuse shall mean (1) willful infliction of physical, emotional or mental injury on a child, (2) sexual abuse, sexual assault, or sexual exploitation of a child, or (3) the failure to treat a child with reasonable care including, but not limited to, overworking a child to such an extent that his/her health or emotional well-being is endangered.
- C. Child in Need of Care shall mean a person who is under the age of eighteen (18) who is subject to abandonment, abuse, and/or neglect, as those terms are defined in this Ordinance.
- D. Child in Need of Care Hearing shall mean the Children's Court hearing to determine whether allegations of a Petition for a Child in Need of Care are supported by a preponderance of the evidence.
- E. Child Protection Proceeding shall mean the Court hearing(s) following a Child in Need of Care Hearing where a child is found to be a Child in Need of Care.
- F. Clear and Convincing Evidence shall mean evidence indicating that the thing to be proved is highly probable or responsibly certain.
- G. Coerced shall mean to compel an act by threat of force or force.

- H. Confidentiality shall mean all hearings, reports, and other materials related to any Child in Need of Care Hearing or Child Protection Proceeding are confidential and shall not be subject to disclosure by any party to anyone who is not a party to the Hearing/Proceeding, for any reason, absent a Court Order requiring such disclosure.
- I. Court or Children's Court shall mean the Pala Children's Court.
- J. Custodian shall mean any person or entity having legal authority over a child either by court order or parent permission.
- K. Dependent shall mean a person who is under the age of eighteen (18) years old and who has been found to be in need of care and placed under the jurisdiction of the Pala Court.
- L. Direct Descendent of the Pala Tribe shall mean a person under the age of eighteen (18) years old and that has a parent or grandparent who is a member of or eligible for membership in the Pala Indian Tribe.
- M. Disposition Hearing shall mean a hearing that follows a Child in Need of Care Hearing and is held to determine what order of disposition should be made concerning a child adjudicated as child in need of care.
- N. Domicile shall mean the place where a person has his/her permanent home or principle establishment and to where, whenever absent, the person intends to return. A child's domicile is considered that of his/her parent(s).
- O. Duress shall mean to restrain one from acting through threat of force or force.
- P. Evidence Beyond a Reasonable Doubt shall mean evidence that, when considered, leads to no other logical explanation except that the continued custody of a child by his/her parent or guardian is likely to result in serious emotional or physical damage to the child.
- Q. Extended Family shall mean a person's parents, children, grandparents, great-grandparents, great-aunts, great-uncles, aunts, uncles, cousins, sisters and brothers, or as otherwise defined by the Tribe.
- R. Family Preservation/Intervention-Prevention Services shall mean services provided to the family to prevent removal of children or to reunite the children with the family.
- S. Guardian shall mean a person, not the natural or adoptive parent assigned by a court of law, who has the authority to provide for the health and care of a child.
- T. Guardian Ad Litem shall mean a person appointed by the court to represent the best interest of a child found to be a Child in Need of Care.
- U. Indian Child shall mean a person under the age of eighteen (18) years old and who is a member of, or eligible for membership in or a direct descendant of a federally recognized Indian Tribe.
- V. Indian Country shall mean all lands within the external boundaries of an Indian reservation under the jurisdiction of the United States government, all dependent Indian communities within the borders of the United States and all Indian allotments where Indian title has not been extinguished.

- W. Indian Tribe shall mean any tribe, band, nation or group of Indians recognized by the Secretary of the Interior as eligible for services provided to Indians
- X. Infant Child shall mean any child under the age of twelve (12) months.
- Y. Neglect shall mean the negligent treatment or the maltreatment of a child, whether by act or omission, by a parent, guardian, or custodian. Negligent treatment includes, but is not limited to, the failure to protect, supervise, control, care for, discipline, and/or provide the necessities of life to for a child, including subsistence, education, medical care, or any care or necessities required for a child's safety and physical, mental and emotional well-being.
- Z. Party or Parties shall mean any person having a relationship or direct interest in a child that is the subject of a child protection proceeding.
- AA. Preponderance of the Evidence shall mean evidence that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.
- BB. Probable Cause shall mean for the purposes of a child protection proceeding, probable cause means testimony or official reports of other evidence from a trustworthy source that would cause a reasonable person to believe that a child may be in need of care and that an investigation and hearing should be conducted to determine all the fact.
- CC. Pala Band shall mean the Pala Band of Mission Indians, and may also be labeled "Pala Band" or "PBMI."
- DD. Pala Social Services shall mean the Social Services Department of the Pala Band.
- EE. Pala Tribal Indian Child and Family Services Worker shall mean a person employed or appointed by the Tribe to represent the interests of Indian children, Indian families and the Tribe.

## CHAPTER TWO PETITION AND HEARINGS

### Section 1      Confidentiality

All child protection proceedings shall be considered and treated as confidential. No employee, officer, and/or agent of the Pala Band may give or release any information regarding a child protection case unless such release is within that person's job duties and responsibilities.

### Section 2      Rights and Interest of Child

In all child protection cases, the Children's Court will hear all the facts and evidence brought before it and must consider the rights of all parties in the case when deciding what is in the child's best interest. The best interest of the child will be placed above the rights of any of the parties and of the child's tribe.

### Section 3      Grounds for Establishing an Indian Child as in Need of Care

- A. Grounds. An Indian child is in need of care if the child:

1. is being or has been neglected by his/her parent(s), guardian and/or custodian;
2. is being or has been abused, by or with the knowledge or acquiescence of his/her parent(s), guardian and/or custodian;
3. has been abandoned.

#### **Section 4      Emergency Removal Orders**

A. Court's Removal Order. No Indian child may be involuntarily removed from his/her home by tribal peace officers, law enforcement officers and/or Tribal Social Services unless the Children's Court has issued an order determining that the child's continued residence in the home would be contrary to the welfare of the child or that out-of- home placement would be in the child's best interest. The Court's findings must be based on oral or written statements of facts showing probable cause of one or more of the following:

1. The child is suffering from an illness or injury for which no parent, guardian, custodian or other person is providing adequate care;
2. The child is in immediate danger in his/her surroundings and removal is necessary for his/her safety and/or well-being;
3. The child will be subject to injury by others if not placed under the protection of the Court;
4. The child has been abandoned by his/her parent, guardian or custodian;
5. No parent, guardian, custodian or other person is able or willing to provide adequate supervision and care for the child; or
6. The child will run away so that he/she will be unavailable for further proceedings.

B. Placement upon Removal. If removal is ordered, placement of the child will follow the placement preferences set out in Section 7. D.

C. Content of Emergency Removal Order. A Removal Order may be verbally issued by the Children's Court to Pala Social Services, and, if practicable, to be followed electronically within 48 hours by a short minute order; provided that the Court issues a written order within five (5) days of the child's removal from his or her home. A written Removal Order will not only include the findings as provided for in Section 4.A. but must also specifically name the child taken into protection, state the time and date issued, and the placement of the child. The order must be signed by the judge or a judicial officer. An Emergency Removal Order may be transmitted electronically by the judge if the judge cannot be present on the Reservation. The Emergency Removal Order must be served on the child's parents, guardian, or custodian by the party seeking the order, as provided in Section 6 within forty eight (48) hours from the time the child is removed.

D. Petition Following Emergency Removal Order. A Child in Need of Care Petition, as provided for under Section 5.B. below must be filed with the Court within three (3) business days after the Court issues a written emergency removal order. The petitioner must serve the petition on the Indian child's parent(s), guardian and/or custodian pursuant to the provisions of Section 6. B.

## **Section 5        Initiation of a Child Protection Case**

A.     Filing the Child in Need of Care Petition. A Child in Need of Care Petition may be filed with the Court by Tribal Social Services if it has probable cause to believe that a child is in need of care. In a case where an Indian child has been removed from his or her home pursuant to Section 4, the Petition must be filed by Tribal Social Services or the Tribal attorney.

B.     Contents of Child in Need Of Care Petition. The Petition must contain the following information:

1.        The name, address and age of the child;
2.        The names and addresses of the child's parents, guardian, or custodian;
3.        A statement of whether the Indian child is a member of, eligible for membership in, or a direct descendent of the Pala Band. The name and address of the child's tribe if the child is not a member, eligible for membership or a direct descendent of the Pala Band;
4.        The specific grounds upon which the Petition is based, sufficient to describe the circumstances under which the child is to be a Child in Need of Care; and
5.        The evidence which the petitioner is relying upon to support the Petition (declarations, doctor's report, teachers' report, reports from witnesses to the injury, abuse or neglect, etc.).

## **Section 6        Scheduling of Initial Hearing and Service of Petition**

A.     Scheduling the Initial Hearing. Upon filing the Petition, the Clerk of Court will schedule an Initial Hearing no later than five (5) business days from the date of filing. In instances where a child has been removed from his or her home pursuant to Section 4, the Initial Hearing will be held no later than three (3) business days following date upon which the child was removed.

B.     Service of Petition. The petitioner must serve the Child in Need of Care Petition along with notice of the time, date and location of the Initial Hearing on the Indian child's parents, guardian or custodian. In cases where the child is not a member of, eligible for membership in, or a direct descendant of the Pala Band, the petitioner must also serve notice on the child's tribe. Service of the Petition and Notice of Hearing may be made by personal delivery, certified mail with return receipt requested, or any other method of service approved by the Children's Court. The Petition and Notice of Hearing must be served no less than two (2) calendar days before the Initial Hearing. A proof of service must be filed with the Court before the Court will act on the Child in Need of Care Petition.

## **Section 7        Initial Hearing**

A.     Purpose of the Initial Hearing. The purpose of the Initial Hearing is as follows:

1.        At the Initial Hearing the petitioner bears the burden of establishing a prima facie showing that the child is a Child In Need of Care and, where appropriate that the child should continue to be placed outside of his or her home.

2. The Children's Court will review the Petition and supporting documents, and hear from the petitioner and the Indian child's parent(s), guardian and/or custodian, child's tribe, and other relevant witnesses. The Initial Hearing is preliminary in nature and is for the purpose of determining whether there is sufficient probable cause to set the case for a Child in Need of Care Hearing and whether or not the child should be placed or remain in protection of Tribal Social Services pending the Child in Need of Care Hearing. The Court may also at this time appoint the child a Guardian Ad Litem or legal advocate to represent the child's interests. The child's parent(s), guardian, custodian and/or child's tribe may be represented by counsel at their own expense.

B. Removal Findings. Should the Court determine at the Initial Hearing, that the child should be placed outside his or her home pending the Child in Need of Care Hearing, the Court's order must make specific findings that the continuation of residence of the child with his/her parent(s) or legal guardian would be contrary to the welfare of the child, and/or that out of home placement would be in the child's best interest. The Court's findings will be based on oral or written statements of facts showing probable cause of one or more of the following:

1. The child is suffering from an illness or injury for which no parent, guardian, custodian or other person is providing adequate care;
2. The child is in immediate danger from his/her surroundings and removal is necessary for his/her safety or well-being;
3. The child will be subject to injury by others if not placed in the protection of the Court;
4. The child has been abandoned by his/her parent, guardian or custodian;
5. No parent, guardian, custodian or other person is able or willing to provide adequate protection, supervision or care for the child; or
6. The child will run away so that he/she will be unavailable for further proceedings.

C. Temporary Placement Order. The Court's order shall also find that temporary placement and care of the child is to be placed with Tribal Social Services.

D. Placement Preferences. If it is determined that taking an Indian child into protection is in the best interest of the child, the Court must find a placement that is the least detrimental to the child both physically and emotionally. The following placement preferences must be applied, unless the Court finds that it would be in the child's best interest to vary the order of preference:

1. An extended family member;
2. A tribal member family;
3. A licensed Indian foster home on, or near the child's reservation;
4. A licensed Indian foster home;
5. A licensed foster home;
6. A licensed facility (i.e. a facility operated by a licensed child welfare service agency); or

7. An appropriate placement for the child.

E. Interim Findings Order. If the Court is satisfied that probable cause exists, it may issue an interim findings order that the child is in need of care but does not need to be removed from his/her home or should be returned to his or her home if removed pursuant to Section 4. In such cases the Court may also order the child's parent or guardian take immediate corrective steps to resolve the problems giving rise to the Child in Need of Care Petition.

## **Section 8 Child in Need of Care Hearing**

A. Scheduling of a Child in Need of Care Hearing. Within thirty (30) days from the issuance of the Initial Hearing Order, the Children's Court must hold a Child in Need of Care Hearing. Notice of the hearing must be issued to the child's parents(s), custodian and/or guardian and child's representative in the manner provided for in Section 6.B. At the written request of any party, or by oral motion at the Initial Hearing, the thirty (30) day requirement may be lengthened or shortened by the Court upon a showing of good cause, but in no event will the Child in Need of Care Hearing be extended beyond sixty (60) from the date a child has been removed from his/her home.

B. Purpose of the Child in Need of Care Hearing. The Purpose of the Child in Need of Care Hearing shall be as follows:

1. In cases where the child has been removed from the home, the Court must determine whether active efforts were made by the family to prevent the child's removal and whether the child should be reunited with his or her family. The Court is not required to make an active efforts and reunification finding if the Court determines:
  - a. The parent has been convicted of murder or involuntary manslaughter or convicted of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or involuntary manslaughter;
  - b. The parent has been convicted of felony assault that resulted in serious bodily injury to the child or another child of the parent;
  - c. The parental rights of the parent with respect to a sibling have been involuntarily terminated;
  - d. The parent has subjected the child to aggravated circumstances (including, but not limited to, abandonment, torture, chronic abuse, and sexual abuse);
  - e. The parent has been convicted of a crime involving domestic violence, sexual assault, possession and/or distribution of controlled substances, and/or gang activity;
  - f. The parent or guardian has allowed a person to reside in their home who has been convicted of the above criminal offenses;
  - g. The parent or guardian, by act or omission has allowed a person convicted of the above criminal offenses to be near or alone with a child; or
  - h. There is substantial evidence that a parent, guardian, or another person in the child's household has committed sexual assault against a child.

2. The Court must determine whether the allegations in the Petition are supported by a preponderance of the evidence.

C. Representation. The parent(s), custodian, guardian, or child's tribe has the right to be represented at their own expense, call their own witnesses and to question witnesses called by any other party.

D. Findings. The Court's findings shall address the following:

1. If the Children's Court determines that active efforts to return the child home are not required, the Court will schedule a Permanency Hearing within thirty (30) days of its Child in Need of Care Order.
2. If at the conclusion of the hearing the Court finds that the child is a Child in Need of Care and that it is in the child's best interest to remain under the jurisdiction of the Court, the Court will declare the child a dependent, and order the case be set for a Dispositional Hearing pursuant to Section 9.
3. If the Court determines that the child should be moved from his or her home at the conclusion of the Child in Need of Care Hearing, the Court order must set forth the findings mandated under Sections 4. A. and 7. B.

## **Section 9 Dispositional Hearing**

A. Timing of the Dispositional Hearing. The Children's Court must set a Dispositional Hearing within thirty (30) days of issuance of the Child in Need of Care Order. The thirty (30) day deadline may be lengthened or shortened at the written request of any party and upon a finding by the Court of good cause.

B. Purpose of the Dispositional Hearing. Having determined that a child is in need of care, the Court at the Dispositional Hearing shall issue a Dispositional Order concerning the child's care, custody, conduct, supervision, maintenance and support, and outlining what services will be provided to and/or required of the child and his or her parents. The Court will hear from the child's parent(s), guardian and/or custodian, child if age appropriate, other relevant witnesses and the recommendations set forth in the Tribal Social Services worker's case plan. The child's parents must be notified that their parental rights may be terminated if they do not reunify within twelve (12) months from the date that reunification services are ordered.

C. Dispositional Order. The Court's Dispositional order shall address the following:

1. After considering all the evidence and documents, the Court shall issue a Disposition Order setting forth the orders it considers necessary for the best interests of the child and reunification of the family, and the factual bases supporting its determination. This shall include approval of, and ordered compliance with, a case plan for reunification, and shall address the following:
  - a. Evaluation and treatment requirements for the child's parent(s), custodian and/or guardian. This may include, but not limited to, evaluation and treatment for substance abuse, mental illness, emotional issues, counseling, parenting classes, and any other case plan requirements.

- b. Requirements relating to the care of the child including, but not limited to, mandatory school attendance, medical and dental care, counseling services, and any other services or activities that the Court finds necessary for the child's best interest and for reunification of the family.
  - c. Whether a child who has been placed in foster care will remain in foster care.
  - d. Whether the child, who has not been placed in foster care, will be removed from the care and custody of his/her parent(s), custodian and/or guardian and placed in foster care.
  - e. In circumstances where a child is being or has been removed and placed in foster care, the Court shall establish a visitation schedule, as the Court deems appropriate.
- 2. If a child is ordered to be, or has been removed from his or her home and placed in foster care, the Court may order trial home visits for a period not exceed six (6) months unless the Court finds good cause to extend the six (6) month limitation. A child that is placed in foster care following a trial home visit that exceeds a Court ordered time line, will be treated as a new foster care placement and the requirements of Section 5. A. and 5.B. must be satisfied.
  - 3. The Court must review the child's dispositional/case plan every ninety (90) days as provided under Section 11, unless there is good cause to extend the review hearing.

## **Section 10 Case Plan**

A. Preparation of the Case Plan. A case plan must be prepared and presented by the Tribal Social Services worker to the Court at the Dispositional Hearing or, at the Permanency Hearing in cases where a Dispositional Hearing is found to be unnecessary.

- 1. The case plan must consist of a written document for each child under the jurisdiction of the Children's Court. The Plan must be a discrete part of the case record and will be jointly developed with the child's parent(s), guardian, or custodian.
- 2. The case plan must be made available to all parties at least ten (10) days prior to the hearing.

B. Content of the Case Plan. The Case Plan shall include the following:

- 1. In a case where a child has been removed from his or her home, the case plan must be prepared no later than thirty (30) days from the date of child's removal and must be designed to achieve a safe placement for the child in the least restrictive setting available and in close proximity to the parents' home consistent with the best interests and special needs of the child.
- 2. The plan must include detailed social services designed to reunite the family, or in cases where the child has remained in the home, the social services that will be needed to eliminate the causes giving rise to the Child in Need of Care Petition.

3. If pursuant to Section 8.B.1., reunification efforts are determined not to be in the best interest of the child, the case plan must set forth the Tribal Social Services worker's recommendation for permanency placement and document the steps to finalize an appropriate permanent placement.
4. When the case plan goal is adoption or Tribal Customary Adoption such documentation must, at a minimum, include child specific recruitment.

## **Section 11      Review Hearings**

A. Timing of Review Hearing. The Children's Court must conduct a review hearing every ninety (90) days until the scheduling of the Permanency Hearing as provided for under Section 12. Review hearings will commence from the date the Dispositional Order was issued.

B. Review Hearing Report.

1. The Tribal Social Services worker must submit a report before each hearing that addresses:
  - a. The status and continuing appropriateness of the child's placement;
  - b. The extent of the parent's or guardian's compliance with the case plan in making active efforts to reunite with the child and to complete whatever steps are necessary to finalize reunification with the child;
  - c. The extent of progress which has been made by the family toward alleviating or mitigating the causes necessitating placement in foster care or filing of the Child in Need of Care Petition; and
  - d. A possible timeline by which the child will be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in another planned permanent living arrangement.
2. The Tribal Social Services worker's report must be completed and submitted to the Court and all parties no later than five (5) days prior to the review hearing. If the Court finds that it is in the child's best interest to remain under the Court's jurisdiction it must enter another Order renewing the continuing jurisdiction of the Court over the child.

C. Case Review of Child Not Removed From His or Her Home. At the twelve (12) month Court review in child protective cases where the child has remained in his or her home, the Tribal Social Services' report must recommend that the case be dismissed without further protective services or that the Court should continue its jurisdiction in order for continued monitoring and family preservation/intervention and preventive services.

## **Section 12      Permanency Hearing**

A. Timing of the Permanency Hearing.

1. A Permanency Hearing should be the deadline for the Children's Court to determine the final plan in a child protection case that will move the child out of temporary foster care and into a safe and permanent placement.
2. The Permanency Hearing for a child who has been removed from his/her home shall be held no later than twelve (12) months after the date the child entered foster care. A child is considered to have entered foster care on the earlier of;
  - a. The date of the first judicial finding that the child is a Child In Need Of Care; or,
  - b. The date that is sixty (60) days after the date on which the child was removed from the home.
3. Where the Court has determined that active efforts are unnecessary (pursuant to Section 8.B.1.), the Permanency Hearing must be held within thirty (30) days from the date of issuance of the Child In Need Of Care Order.
4. The dates set forth in this subsection shall be maximum timeframes, and the Court may move to a Permanency Hearing at an earlier date, as the Court deems appropriate.
5. All parties must receive Notice of the Permanency Hearing no less than ten (10) days prior to the hearing date. Notice of the hearing must be made in the manner provided for under Section 6.B.

B. Purpose of the Permanency Hearing. At the Permanency Hearing the Court must order one of the following permanent plans for placement of the child and specify the date that the plan will be implemented:

1. Return the child to his or her parent, custodian or legal guardian;
2. Continue with reunification for an additional ninety (90) days;
3. Proceed with adoption or Tribal Customary Adoption by a relative, foster care parent or other non-relative. In this instance, the Tribe may file a petition to terminate parental rights, if it is in the best interests of the child, or the acts or omissions which first brought the child/children under Tribal Court jurisdiction constitutes severe or extreme abuse or neglect, or the parent(s) are, or going to be imprisoned for long sentences which adversely affect caring for the child/children;
4. Proceed with legal guardianship;
5. Proceed with permanent placement with a relative, foster parent or other non-relative; or
6. Provide another specified permanent living arrangement, if there is a compelling reason why it would not be in the best interest of the child to proceed with one of the other listed options.

C. Court Findings. The Court must issue findings of fact and conclusions of law at the conclusion of the hearing within fifteen (15) days. The Court's findings and conclusions must be in writing and include, at a minimum the following:

1. Persons present at the hearing and whether absent parties were provided with appropriate notice. The order must also verify that reports, including the case plan, offered into evidence have been provided to all parties in advance of the hearing.
2. A finding, when appropriate, as to what active efforts the parent(s) and Tribal Social Services has made to reunify the family and to finalize a permanent plan.
3. A statement addressing special factors or conditions of the child that are identified as special needs, what services are to be provided to address the needs and who is responsible for providing the services.
4. The Court's determination of the permanent plan for the child and why the plan is in the best interest of the child. The order must state the steps to be taken and time lines for accomplishing the permanent goal.
5. If the permanency plan is termination of parental rights and the petition has not yet been filed, the order shall state the expected time frame for the filing of the petition for termination of parental rights is thirty (30) days. If the petition has been filed the Court should proceed to schedule a hearing date for termination of parental rights.
6. For any plan, the scheduling of a review hearing within ninety (90) days (unless good cause exists to shorten or extend the above timeframe) and the purpose of the hearing, unless all Court and Tribal Social Services involvement has been terminated.

### **Section 13 Involuntary Termination of Parental Rights**

A. When Termination of Parental Rights is Mandatory. The Children's Court may terminate parental rights where:

1. The child has been in foster care under the responsibility of the Pala Band for fifteen (15) months of the most recent twenty-two (22) months.
2. In making the fifteen (15) month calculation, the Court must use a cumulative method (i.e., where a child has experienced multiple exits and entries into foster care, all time during which the child was in foster care for the previous twenty-two (22) month period shall be added together).
3. For purposes of this section, a child is considered to have entered foster care on the earlier of:
  - a. a judicial finding that the child is in need of care; or
  - b. sixty (60) days after the child is removed from the home.
4. The Court may not include trial home visits or runaway episodes in calculating the fifteen (15) months in foster care.
5. When a termination of parental rights petition is filed pursuant to this section, the Tribal Social Services must concurrently begin to identify, recruit, process and approve a qualified adoptive family for the child.

B. Exceptions to Mandatory Termination of Parental Rights. The Court may find exception to Section 13.A.if:

1. The child is being cared for by a relative;
2. The case plan documents a compelling reason why it would not be in the best interest of the child to terminate parental rights. A compelling reason not to terminate parental rights may include, but not limited to, a determination that adoption is not an appropriate permanency goal for the child and/or there are insufficient grounds to file a petition to terminate parental rights; or
3. The Court determines that Tribal Social Services has failed to provide the child's family, consistent with the time frame in the case plan, services deemed necessary for the safe return of the child to the home in cases where active efforts to reunify the family were required.

C. Infant Children. If an infant child has been determined by the Court to have been abandoned a petition to terminate parental rights on this ground must be filed within sixty (60) from the Court's determination that the child is an abandoned infant.

D. Felony Convictions. In a case where the parent(s) has been convicted of a felony listed in Section 8.B.1.a. a petition to terminate parental rights on this ground must be filed by Tribal Social Services within thirty (30) days from the Court's determination that active efforts to reunify the child and the parents are not required.

E. When Termination of Parental Rights is Discretionary. The Court may terminate parental rights upon any of the following grounds:

1. Continued protection of the child with his or her parent(s) is likely to result in serious emotional or physical damage to the child;
2. The parents have subjected the child to sexual, physical and/or emotional abuse;
3. The parents have failed reasonable reunification efforts and it is documented in the case plan that adoption is in the best interest of the child;
4. Minimal contacts with the child by the parents and an exhibiting of extreme disinterest for a period of six (6) months or more;
5. Parental drug and alcohol impairment which creates an inability to care for the child and refusal or failure by the parent(s) to respond to substantial treatment efforts;
6. For a father, if paternity is not sought or protection of the child is not sought within thirty (30) days of notice of the child's birth;
7. The parental rights of the parent with respect to a sibling have been terminated involuntarily; or
8. The parent has been declared by a court of competent jurisdiction to be developmentally disabled or mentally ill.

F. Procedure for Termination of Parental Rights.

1. Except for the mandatory filing requirements of Section 2.B. and 2.C. above, a Tribal Social Services worker must file a Petition to Terminate Parental Rights no later than thirty (30) days after he or she determines that there is sufficient grounds to support the termination of parental rights or when ordered to do so by the Court. The Petition must be complete and definite and provide proper notice to the parent(s). The Petition will set forth the specific ground(s) upon which the Petition is based, and shall set forth the facts and evidence supporting the grounds stated in the Petition. Notice shall be provided to the parents at least twenty (20) days prior to the pre-hearing.
2. A pre-hearing must be scheduled no later than thirty (30) days from the filing of the Petition. Notice shall be provided to the parents at least twenty (20) days prior to the pre-hearing. At the pre-hearing the Court will set a date for all discovery to be concluded. Court must set a trial date on the Petition no later than ninety (90) days after the Petition has been filed.
3. The Court, in its discretion, may schedule a settlement conference which will be held after the discovery deadline but no earlier than thirty (30) days from the trial date.
  - a. If so ordered by the Court, a settlement conference shall be held prior to a trial on the Petition for the purpose of seeking the parents' consent to the adoption and to settle related issues. Parties present at the settlement conference will include all parties, their representatives, and other relevant case participants, (including the child if age appropriate), other family members or relatives and the foster parents and /or pre-adoptive parents. If settlement is reached and the parents agree to the adoption of their child, a settlement agreement will be prepared by the parents' counsel or the Tribal Social Services if the parent has not retained counsel. The agreement must set forth the full and complete terms of the parents' voluntary consent, specifically what, if any, contact the parents will continue to have with the child and how such contacts, if agreed upon, will be managed and by whom. If requested by a party, the Court may appoint a professional mediator to assist the parties in reaching a settlement on the adoption and related issues. The cost of the mediator shall be split by the parties.
  - b. If settlement is reached and the parent's consent to the adoption of their child, the Court, at the trial on the Petition, must question the parents to ensure that their consent is voluntary and informed. If the Court is satisfied that the parent(s) are knowingly and voluntarily relinquishing their parental rights and that adoption is in the best interest of the child, the Court must issue an order terminating the parent(s) rights and admit into evidence the signed settlement agreement reached by the parties. The Court will no later than fourteen (14) days from the close of the trial issue written findings of fact and conclusions of law. The Court's findings must include, but need not be limited to, a finding that states what efforts were made by the Court to ensure the relinquishment of parental rights was voluntary and informed.
  - c. If settlement is not reached, the Petition to Terminate Parental Rights will advance to trial. The parent(s) have the right to be represented by counsel at his/her own expense and the right to confront and cross examine witnesses.

4. At the hearing the Court must, based on clear and convincing evidence, determine whether:
  - a. All parties were properly noticed;
  - b. The evidence presented show grounds for termination of parental rights;
  - c. If applicable, what active efforts were made to reunify the family; and
  - d. Termination of parental rights is in the best interest of the child.
5. If the Court is satisfied that the above requirements have been met then the Court shall issue an order terminating the rights of the parents. The Court must issue written findings of facts and conclusions of law within fourteen (14) days of the termination hearing. The Court's written findings must make specific findings regarding each of the requirements listed above.

G. Tribal Membership Status. Termination of parental rights will not affect the child's existing tribal membership status, nor the child's existing rights or privileges as a tribal member whether written or unwritten, nor will it affect the jurisdiction of the Court over the child. However, if parental rights are terminated before a child is enrolled, the Tribe will require a certified birth certificate showing the child's biological parents before the child may be enrolled.

H. Effect of Termination of Parental Rights. If a parents' rights are terminated in whole, they no longer have any right to the child or any obligation for that child. A termination in whole completely severs the parent/ child relationship. A termination of parental rights in part only terminates the parents' rights to legal and physical protection of the child and their responsibility to financially support the child.

#### **Section 14 Post-Permanency Review**

A. Timing of the Post-Permanency Review Hearing. The Children's Court shall conduct a review hearing no later than ninety (90) days following the issuance of the Permanency Order or Order Terminating Parental Rights. The Tribal Social Services worker must file a report addressing the progress of the permanency plan and the report shall be filed with the Court and parties at least forty-five (45) days prior to the review hearing.

B. The Purpose of the Post-Permanency Review Hearing.

1. Reunification. In all cases where reunification was the permanency plan for the child, the Court must determine at the ninety (90) day review hearing, whether reunification has been achieved and if not, issue a new permanency plan which provides that a Petition to Terminate Parental Rights be filed within thirty (30) days or set another review hearing within thirty (30) days to implement an alternative plan for guardianship or permanent protection.
2. Permanent Guardianship or Protection. The Court expects that guardianship and permanent protection plans be fully implemented within ninety (90) days from the Permanency Hearing unless there are compelling reasons otherwise. If permanent guardianship or protection has not been achieved, the Court will grant one more

ninety (90) day review hearing at which time the case will be set for a final hearing to grant permanent guardianship or permanent protection to the child's new family or to issue a new permanency plan.

3. Adoption. Where the rights of the parents have been terminated and the permanency plan provides for adoption by the family with which the child has been residing, a review hearing must be held to ensure that finalization of the adoption is progressing.
  - a. In cases where the rights of the parents have been terminated and an adoptive home is being recruited, a review hearing must be held to determine what efforts have been made, since the termination of parental rights hearing, to identify potential adoptive homes both locally and in other jurisdictions if necessary.
  - b. The Court must continue to hold review hearings in permanency plan cases that provide for adoption until a final hearing date is scheduled to issue the order of adoption.
4. All Other Permanency Plans. All other permanency plans that provide for some other specified permanent living arrangement other than reunification, adoption, guardianship or permanent protection, must be reviewed to determine whether the case is ready for finalization or whether a new permanency plan is needed.

## **Section 15 Final Hearing**

### **A. Timing of the Final Hearing.**

1. It is the goal of the Children's Court to conclude a Child in Need of Care case within twelve (12) to fifteen (15) months from the date the child is placed in foster care or in a case where the child has not been removed from his or her home twelve (12) to fifteen (15) months from the date the child is determined to be a Child in Need of Care.
2. A final hearing must be scheduled within fifteen (15) days from a Court finding that the goal of a child's permanency plan has been achieved. All parties to the case must be properly noticed at least ten (10) days before the hearing and in the manner provided for under Section 6. B.

B. Court Findings. At the conclusion of the final hearing, the Court must issue findings of fact and conclusions of law that include but are not limited to the following:

1. Who was present at the hearing and whether absent parties were properly noticed. It should be verified that reports provided the Court were made available to all parties prior to the hearing.
2. If any issues were contested, the Court's decision regarding the contested issues and the reasons for the decision.
3. A finding as to why the adoption, permanent protection of permanent guardianship is in the best interest of the child.

4. A finding that full disclosure of the child's history and current or potential problems has been made.
5. A finding that reasonable efforts were made to finalize a permanent plan.
6. A statement and description of the new legal relationship and its terms and conditions, including any post-finalization contact agreements.
7. If this is an adoption finalization, a finding that all rights of the birth parents have been relinquished or terminated and that any necessary consent to the adoption has been obtained.
8. If protection or guardianship is granted, clear and detailed visitation and support orders relating to the biological parents.
9. A clear statement that the Court's involvement in this case is concluded.

### **CHAPTER THREE TERMINATION OF PARENTAL RIGHTS AND ADOPTION**

#### **Section 1      Termination of Parental Rights**

A. Involuntary Termination. Parental rights may be involuntarily terminated under Chapter 2, Section 13 or upon the filing of Petition to Terminate Parental Rights by any person who seeks to adopt an unmarried child. Grounds to terminate parental rights shall include the following:

1. The child has been "abandoned" by one or both parents as that term is defined under Chapter 1. Section 3. 1. of the this Ordinance;
2. The child has been neglected or cruelly treated by one or both parents;
3. One or both parents is suffering from habitual use of alcohol or any other controlled substance as defined under tribal, federal or state law which renders them incapable of caring for or controlling his/her child;
4. One or both of the parents has been convicted of a felony and the facts of the crime prove the unfitness of the parent(s) to maintain custody and control of the child.
5. Where one or both parents has been declared by a court of competent jurisdiction to be developmentally disabled or mentally ill such that that he/she is unable to care for and/or controlling the child in a proper manner;
6. Where one or both parents have been declared by a court of competent jurisdiction to be mentally disabled, meaning that the parent is suffering a mental incapacity or disorder such that the parent is unable to care for and/or control the child in a proper manner; or
7. Any other grounds upon which the Court of Jurisdiction finds by clear and convincing evidence that one or both parents cannot care for or control the minor.

B. Voluntary Termination. Voluntary termination of parental rights may only be ordered if the parent gives their valid and informed consent to the termination.

C. Valid Consent. Any parent may voluntarily consent to the termination of his/her parental rights to any minor child. No voluntary consent will be valid unless:

1. Consent is given more than ten (10) days after the birth of the child;
2. Consent is given in the presence of the Children's Court or designated pro tem judge, with the participation of a designated representative;
3. The person relinquishing parental rights is fully informed by the Court of his/her rights, and the consequences of voluntary relinquishment thereof, and he/she signs a statement declaring he/she is fully informed of the legal ramifications of his/her voluntary consent to termination of parental rights, the he/she understands what he/she were doing and knowingly and voluntarily relinquishes his/her parental rights; and
4. The person relinquishing parental rights is informed that he/she has the right to be provided with an interpreter to explain the voluntary consent, its consequences, and his/her right to withdraw the voluntary consent, the time limit for withdrawal of consent and the procedure for doing so.

D. Withdrawal of Consent. Voluntary consent to the termination of parental rights can be withdrawn anytime within ten (10) days of giving voluntary consent. After ten (10) days, withdrawal can only be done with the Court's permission. The Court may give permission only if it finds the consent was given under duress, was coerced, or under some other circumstance giving rise to its invalidity (e.g. the party was not competent at the time of signing the consent).

## **Section 2 Petition to Terminate Parental Rights**

A. Petition. A Petition to Terminate Parental Rights may be filed by any adult person seeking to adopt an unmarried child. The Petition shall contain the following information:

1. The name and address of the petitioner and the relationship of the petitioner to the child;
2. Name, date of birth and address of the child;
3. Names and addresses of the child's legal parents, if known;
4. Grounds for termination of parental rights with sufficient factual detail to place the legal parents on notice of the allegations against them;
5. Name and address of the minor child's Tribe if other than the Band;
6. Whether legal parents are voluntarily consenting to the termination of his/her rights.

B. Service of Petition. The Petition to Terminate Parental Rights must be served on the legal parent(s) of the child and the child's Tribe if other than the Pala Band. Service shall be made by personal service. If personal service cannot be made on the parent(s) the Petitioner may request that the Court

authorize service of the Petition via an alternative method. Such alternative service may include but is not limited to registered mail, return receipt requested, publication in the local newspaper where the parent(s) were last known to reside. A proof of service must be filed with the Tribal Court before Petition will be set for hearing. If the identity or the whereabouts of the parent(s) are unknown and upon a showing of due diligence by the petitioner to identify and locate the parents the Tribal Court may proceed to hearing on the Petition without any further notice to the legal parents.

C. Notice of Hearing. Upon the filing of the proof of service or a finding by the Tribal Court that service is not attainable; the matter shall be set for hearing. A Notice of Hearing shall be issued by the Tribal Court and shall set forth the time, date, and location of the hearing. The parties shall be advised that they have a right to presented at the hearing at their own expense. The Notice of Hearing shall be served on the parties by the Tribal Court. A hearing may not be held less than thirty (30) days from the date the Notice of Hearing is served on the parties. A request for a continuance of the hearing may be made any party and granted upon a showing of good cause.

D. Standard of Proof. The standard of proof for granting a Petition to Terminate Parental Rights shall be clear and convincing evidence. After hearing from all parties and witnesses, if any, and a review of all relevant documents, or the entry of the voluntary consent the Tribal Court shall issue a written order no less than ten (10) days following the hearing. If the Tribal Court grants the Petition to Terminate Parental Rights, the petitioner may proceed with a Petition for Adoption.

### **Section 3      Adoption Petition**

A. Who May Be Adopted. An Indian child may be adopted when:

1. His/her parents' rights have been terminated pursuant to Chapter 2, Section 13;
2. His/her parents' rights were terminated by another court of competent jurisdiction;
3. His/her natural parents are deceased; or
4. Both natural parents' consent to the adoption.

B. Initiation of an Adoption. An adoption proceeding must be initiated after the parental rights of the parent(s) has been ordered terminated pursuant to Section 1. above or under Chapter 2. Section 13. Once a parent(s) rights have been terminated, a Petition for Adoption may be filed with the Children's Court by any person wishing to adopt the Indian child.

C. Contents of the Adoption Petition. The Adoption Petition must state the following:

1. The relationship, if any, of the petitioner to the Indian child;
2. The name, sex, date of birth, and residence of the Indian child;
3. The names and addresses of the child's custodian or guardian. If the child is in sheltered care, the location and the time he or she was placed in shelter care.
4. The tribal affiliation of the petitioner; and

5. The tribal affiliation of the Indian child.

D. Certification that Parental Rights Have Been Terminated. The Petition must be accompanied by a certified copy of the Court order terminating the parental rights of the child's natural parents, or proof that the natural parents of the child are deceased.

#### **Section 4 Scheduling of the Adoption Hearing**

A hearing date must be set no more than forty-five (45) days from the filing of the Petition for Adoption.

#### **Section 5 Pre-adoption Placement Report**

A. Pre-Adoption Report. A pre-adoption placement report must be prepared and served on all parties at least fifteen (15) days prior to the adoption hearing. The report must be prepared by the Tribal Social Services worker or other tribally approved agency. The pre-adoption report must present an opinion as to whether the adoption is in the best interest of the child. Adoptions that will result in the substantial alienation of the Indian child from his or her Tribe, culture, or heritage will not be favored.

B. Placement Preferences. To the extent essential to the best interest of the child, the following placement preferences will be followed:

1. An extended family member;
2. A tribal member family;
3. An Indian family;
4. A licensed Indian foster family;
5. A licensed foster family; or
6. An appropriate placement for the child.

#### **Section 6 Order of Adoption**

After the Children's Court has heard all the evidence and is satisfied that in a case of voluntary termination of parental rights, the natural parent(s) consent is valid and has determined that adoption is in the best interest of the child, the Court will enter an Order of Adoption. The Order must be kept on record with the Tribe, and forward to the Bureau of Indian Affairs and the State of California Office of Vital Statistics.

#### **Section 7 Adoption without Termination of Parental Rights – Tribal Customary Adoption**

The Court may order the permanent plan of adoption without the termination of parental rights when: (1) the child is an enrolled member of, or eligible for membership with, the Pala Tribe; (2) either or both of the parents are also enrolled members of the Pala Tribe; and (3) it would be detrimental to the physical, emotional or psychological well-being of the child if termination of parental rights were to occur. The burden of proof during a hearing or hearings that determine the applicability of this section is upon the petitioning party seeking the Tribal Customary Adoption ("TCA").

A. Filing Petition. For the purposes of this section, any party can petition the Court for the permanent plan of TCA. The option of TCA is not to be used as a tool to delay the proceedings, it cannot provide and will not be used as a second chance to litigate the child's best interests when it has already been determined that termination of parental rights is in the child's best interests. The TCA is intended then to fit seamlessly within the statutory framework of this Code. As such, a party shall only be granted either a TCA or plan of adoption pursuant to Sections 1 or 2 above.

B. Contents of the Petition. The contents of the petition will be the same as Section 3.C. above, and may be set forth on the petition form prescribed by the court to be used for seeking a TCA.

C. Grounds for the Petition. The grounds for TCA shall be similar to Section 1.A. and/or Section 3.A. above.

D. Service of Petition. Service shall be pursuant to Section 2.B. above.

E. Notice of Hearing. Notice shall be pursuant to Section 2.C. above.

F. Scope of the Hearing. The scope of the hearing will be for the petitioning party to establish that the child or children will have equal permanence in their lives without terminating parental rights, and that such result reflects the traditional Tribal values militating against the termination of parental rights. The standard of proof shall be clear and convincing evidence.

G. Void Petition Ab Initio. A petition for TCA is void at its inception and non-reviewable when both parents have voluntarily chosen to terminate parental rights and the paperwork has been signed but not filed, and the time frame for filing a petition has yet to lapse from the date of proper notice. A petition for TCA is similarly void and non-reviewable when one parent has voluntarily signed for the proper paperwork for termination of parental rights, and the other parent is deceased, whereabouts unknown, or subject to a life term in prison with or without the possibility of parole.

H. Placement Preferences. To the extent essential to the best interest of the child, the following placement preferences will be followed:

1. An extended family member;
2. A tribal member family;
3. An Indian family;
4. A licensed Indian foster family;
5. A licensed foster family; or
6. An appropriate placement for the child.

I. Scheduling of the Adoption Hearing. A hearing date must be set no more than forty-five (45) days from the filing of the Petition for Adoption.

J. Pre-adoption Placement Report. A pre-adoption placement report must be prepared and served on all parties at least fifteen (15) days prior to the TCA hearing. The report must be prepared by the Tribal Social Services worker or other tribally approved agency. The pre-adoption report must present an opinion as to whether the adoption is in the best interest of the child. Tribal Customary Adoptions that will

result in the substantial alienation of the Indian child from his or her Tribe, culture, or heritage will not be favored.

K. Order of Tribal Customary Adoption. After the Children's Court has heard all the evidence and is satisfied that Tribal Customary Adoption is in the best interest of the child, the Court will enter an Order of Tribal Customary Adoption. The Order must be kept on record with the Tribe, and forwarded to the Bureau of Indian Affairs, and the State of California Office of Vital Statistics.

## **CHAPTER FOUR GUARDIANSHIP**

### **Section 1 Purpose**

It is the purpose of this section to provide for the appointment of guardians for children whose parents are deceased or are otherwise unable or unwilling to care for them on a permanent or temporary basis.

### **Section 2 Authority of the Court**

The Children's Court has the authority to appoint guardians for the person and property of an Indian child who is under the jurisdiction of the Court. The Court has the authority to place conditions upon a guardianship, to limit the powers of the guardianship and to define the terms of the guardianship.

### **Section 3 Who is eligible to be a Guardian**

A. Person Eligible to Act as Guardian. Any person eighteen (18) years of age or older may, if not otherwise disqualified, be appointed guardian of a child and/or his or her property.

### **Section 4 Who is not eligible to be a Guardian**

- A. Person not Eligible to Act as Guardian. A person will be disqualified as an eligible guardian if:
1. He/she is found to be incompetent;
  2. He/she has been convicted of a crime involving child abuse or neglect, domestic violence, sexual assault, possession and/or distribution of controlled substances, and/or gang activity;
  3. He/she has a person residing in their home that has been convicted, or has pending criminal charges regarding the above criminal offenses.
  4. He/she is a non-resident of the Pala Band and who has not consented to the jurisdiction of the Tribe; or
  5. There are other reasons that render such person the Children's Court finds unsuitable.

### **Section 5 Petitioning for Guardianship**

A. Filing Petition. Any interested person or tribal agency may file a petition for the appointment of himself or herself or some other qualified person as the guardian of an Indian child.

B. Contents of Petition. A petition for guardianship must state the following:

1. The name, age, residence and tribal affiliation of the Indian child;
2. The name, age, residence and tribal affiliation of the person whom petitioner asks to have appointed guardian;
3. The name, age, residence and tribal affiliation of the Indian child's extended family;
4. The name, age, residence and tribal affiliation of the person or facility having protection of the child and the date the child was placed in that protection;
5. The reason why the appointment of a guardian is necessary and the reason why the person seeks to be appointed as the child's guardian;
6. The approximate value and description of the Indian child's property, including trust property and any payments to which he or she is entitled;
7. Any limitations requested on the powers and duties of the guardian; and
8. The requested term of the guardianship.

## **Section 6 Guardianship Hearing**

A. Timing. A guardianship hearing must be held within forty-five (45) days from the filing of the Petition for Guardianship.

B. Notice of Hearing. Notice of the Hearing and Petition for Guardianship must be given to all persons named in the Petition according to Section 4.B.1. The hearing notice and Petition shall be served by personal delivery, certified mail with return receipt requested, or any other method of service approved by the Children's Court. The Petition and Notice of Hearing must be served no less than ten (10) days before the Guardianship Hearing. A proof of service must be filed with the Court before the Court will act on the Petition for Guardianship.

C. Guardianship Order. After considering the Petition and hearing testimony from all interested parties and witnesses, the Court must issue an Order that specifically addresses the following:

1. The need, if any, to appoint a guardian;
2. Where the Court determines a guardian is necessary, where it is in the best interest of the child to appoint the person seeking the guardianship appointment;
3. The terms of the guardianship including, but not limited to any limitations on the powers of the guardian; and
4. If the child has property to be managed, whether the guardian will be required to post a bond and/or make an annual accounting to the Court.

D. Letters of Guardianship. Following the entry of an Order Appointing a Guardian, the Court Clerk will issue Letters of Guardianship to the person appointed. The Letters of Guardianship must set forth the name of the person appointed as guardian, the name and age of the child, and the powers granted the guardian. A Letter of Guardianship must be affirmed by the guardian and certified by the Court.

## **Section 7      Guardian Bond**

A.      Bond Required. If the Indian child's estate includes real or personal property (excluding personal possessions such as clothes, books, furniture, etc.) valued at five hundred (\$500.00) dollars or more, the Children's Court may require the guardian to file a bond or other security payable to the Court in a sum fixed by the Court to protect against the guardian's mismanagement of the child's estate.

B.      Annual Accounting. If the Indian child's estate includes real or personal property (excluding personal possessions such as clothes, books, furniture, etc.) valued at five hundred (\$500.00) dollars or more, the Children's Court may require the guardian to file a written report annually accounting for the guardian's administration of the property.

## **Section 8      Duties of a Guardian**

A.      Duties. The duties of a guardian include the following, unless limited by the Children's Court:

1.      Provide for the care, education, protection of the child;
2.      Make all decisions with respect to the child that the child's parent(s) would have the right to make including, but not limited, to consent to medical treatment and decisions regarding education, religion, and cultural upbringing;
3.      Preserve, protect and manage the child's property for the best interest of the child, to the extent consistent with tribal and federal laws;
4.      File with the Court within one (1) month after his or her appointment a list of all property of the child that has come into possession of the guardian;
5.      If Court ordered, file with the Court an annual accounting of the guardian's administration of the property of the child; and
6.      Apply to the Court for an order authorizing the sale of any property of the child or authorizing payments out of the estate of the child to the child or on his/her behalf.

## **Section 9      Removal of a Guardian**

The Children's Court may remove a guardian if the guardian is no longer qualified or if removal is in the best interest of the child. The Court may appoint a successor guardian and require the removed guardian to deliver up to the successor all property of the child.

## **Section 10      Termination of Guardianship**

A guardianship will be terminated automatically upon the eighteenth (18) birthday of the child or upon the expiration of the terms of the guardianship stated on the Children's Court order. The guardianship may also terminate if the Court determines the guardianship is no longer necessary.

## **CHAPTER FIVE CHILD SUPPORT ORDERS AFTER REMOVAL**

### **Section 1      Parents have a duty to support their Children**

The child subject to the jurisdiction of the Tribal Court is the person to whom support is owed, and the guardian(s) shall be entitled to such support for the benefit of the child. Parents are the persons who owe a duty of support. It is the intention of this Code to impose a duty upon the parent(s) of the child or children before the Tribal Court to support the child or children in the manner suitable to the child's or children's circumstances.

### **Section 2      Forwarding Support & Support Amount**

Where support is ordered to be paid, the Tribal Court shall forward an order to the Tribal Finance Department directing support to be paid on a month-by-month basis from per capita distribution until a termination or modification of the order is made and delivered to the Tribal Finance Department.

A.      The amount ordered to be paid will be based on an income and expense statement, pay stubs, and tax returns of the person or persons who owe the duty of support; and calculated according to State and Federal Guidelines. The calculated amount shall be paid directly to the caregiver of the child or children.

B.      In the circumstance where the parent is ordered to pay support and the parent is not an enrolled member of the Pala Tribe, the order shall be served upon said parent(s) to pay the amount on a monthly basis.

### **Section 3      Authority to modify or terminate the support order**

The Tribal Court shall have the authority to modify or terminate the support order upon proper petition from the person or persons who are ordered to remit the support. If such a petition is filed by the person or persons who owe the duty of support, then the petition will be accompanied by an updated income and expense statement, updated pay stubs for the previous ninety (90) days from the date the petition is filed, and a tax return for the previous year.

### **Section 4      Bankruptcy**

The support order is non-dischargeable in bankruptcy.

### **Section 5      Special Support Orders**

A.      Child in Special Placement. In the circumstances where the child subject to the jurisdiction of the Tribal Court is placed in an institution of recovery, or similarly situated, and not in the home of a caregiver nor incarcerated, the Tribal Court may review the issue of support upon petition by Tribal Social Services. The Tribal Court may make all support orders as necessary to support the child from both the parents income, and the child's trust income proportionate to the circumstances of each case. In this situation, the Tribal Social Services Department is operating in the place of the parent, parents, or guardian, and may be entitled to reimbursement of expenses incurred as a result of the special needs of the child.

B.      Child Support Orders in Family Law. The Tribal Court has the authority to set support orders in circumstances where one parent is seeking support from the other parent. In this circumstance the party who is seeking support must establish that the person from who support is sought owes a duty of support

because that person is the biological parent of the child or children for whom the support is sought. The amount of support will be calculated as set forth in Section 2 of this Chapter.

C. Prior Parental Rights Termination Order. A biological parent whose parental rights have been previously terminated cannot owe a duty of support for their biological child or children.

#### **Section 6      Date of Funds Transfer to Caregiver or Other**

Once the Tribal Court makes an order for support under this Code, the support payments shall begin as soon as practicable under the circumstances.

#### **Section 7      Support from Incarcerated Parents**

A parent who is enrolled in the Pala Band and who is incarcerated in Federal or state Prison for a term in excess of one (1) year is not subject to the support limits set forth in the state and Federal Guidelines, but such person's per capita may be directed to support the parent's child after the parent's debts to the Tribe have been satisfied.

#### **Section 8      Order after Hearing**

The order for support shall be included in the Order after Hearing.

#### **Section 9      Effect of Multiple Support Orders**

Where there is more than one support order or a new child support order, then the Court will revise the amount to be paid to the children. The amount will be paid on an equal basis to each child, unless there are special needs related to one or more of the children. The Tribal Judge will make the determination regarding what qualifies as special needs.

#### **Section 10     Tribal Court Support Forms**

The Tribal Court Administrative Offices shall be responsible for providing all forms necessary for seeking support, modifying and/or terminating support. Hand written documents will not be accepted except under extreme and exceptional circumstances where the court forms are not available.

#### **Section 11     Periodic review**

The Tribal Council and the Tribal Social Services Department shall periodically review the guidelines set forth in this chapter.

### **CHAPTER SIX TRANSFER OF JURISDICTION**

#### **Section 1      Notice to Other Tribes**

If the Children's Court or any party in a Indian child protection proceeding has reason to believe that the child is not enrolled with the Pala Band and is presumed to be a member or eligible for membership in a Tribe other than the Pala Band, the Court Clerk will be directed to give written notice of the proceeding to the child's Tribe. The notice must require that the child's Tribe respond in writing within fifteen (15) days of

receiving the notice and to state whether the Tribe intends to act in the matter or seek transfer of the case. The notice must include a copy of this Chapter and written instructions on how the child's Tribe may intervene in the child protection proceeding if it so chooses.

## **Section 2      Transfer of Jurisdiction**

A.      Motion to Transfer. If a Tribe files a motion requesting transfer of a pending Child in Need of Care action, the Children's Court must schedule a hearing within thirty (30) days from the filing of the Motion to Transfer. Notice of Hearing on the Motion to Transfer must be served on all parties to the Child in Need of Care proceeding and the child's Tribe. The Court may dispense with holding a hearing on a Motion to Transfer, if all the parties to the Child in Need of Care proceeding stipulate to the transfer and the Court finds that it is in the best interest of the child to transfer the case.

B.      Motion to Transfer Hearing. At the Motion to Transfer hearing, the Court will hear from all the parties and the child's Tribe and weigh the following factors in deciding whether or not a case should be transferred to the child's Tribe:

1.      Whether or not the child's presumed Tribe has jurisdiction;
2.      The wishes of the parent(s), custodian, or guardian;
3.      The wishes of the child, if he or she is able to understand the meaning of a transfer of jurisdiction;
4.      The recommendation of the Tribal Social Services worker and other social and health service staff;
5.      Where the child and the child's parent(s), guardian and/or custodian reside and their tribal affiliation;
6.      The child's ties and connections to the tribal communities involved, as well as the child's parent(s), guardian and/or custodian; and
7.      Whether the child's Tribe(s) have timely responded to the notice informing the Tribe of the child protection proceeding.

## **Section 3      Interim Orders to Protect the Child during Transfer Proceedings**

The Children's Court may make any orders which will protect the child, pending the outcome of any transfer of jurisdiction proceeding.

## **Section 4      Court's Order**

After weighing the factors listed in Section 2.B. above the Children's Court must issue an order either transferring the case to the child's Tribe or retaining jurisdiction over the case. The Court's order should be specific and clearly states the grounds for its decision.

## Section 5 Recognition of Orders and Acceptance of Jurisdiction

A. Recognition of Another Court's Order. The Children's Court may give recognition to state and other tribes' court orders as a matter of comity (courtesy) if:

1. The order does not violate the Indian Child Welfare Act;
2. The court granting the order had jurisdiction over the case; and
3. The order does not violate the public policies of the Pala Band.

A. Accepting Jurisdiction from State or Tribal Courts. The Court has the authority to accept transfers of jurisdiction from state courts or tribal courts and governments.

## CHAPTER SEVEN AMENDMENTS

### Section 1 Effective Date and Amendments


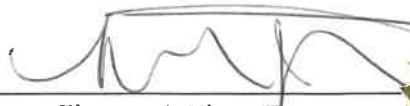
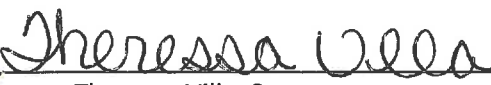



A. Amendment of Ordinance. This Ordinance 21 – Child Welfare may be amended by a majority vote of those members present at a duly called General Council meeting at which a quorum is present.

B. Clerical Revisions. Any clerical, administrative, and non-substantive amendments, may be made be approved by the Executive Committee.

## CERTIFICATION

We, the undersigned duly elected members of the Executive Committee, do hereby certify that the foregoing Ordinance was adopted by a majority vote of the **General Council**, at a duly held regular meeting at which a quorum was present, with **121** in favor, **25** opposed with **0** abstentions, on this **10<sup>th</sup>** day of **August** in the year **2011**. We, the undersigned members of the Executive Committee, do hereby certify that this Ordinance was amended at a duly called regular meeting of the **General Council**, at which a quorum was present, on this **9<sup>th</sup>** day of **April 2014**, by a vote of **89** in favor, **14** opposed, and **21** abstaining.

This version shall supersede all previous versions.

 Robert H. Smith, Chairman	 Howard K. Maxcy, Jr., Vice-Chairman
 Theresa J. Nieto, Treasurer	 Theressa Villa, Secretary
 Dion Perez, Committee	 Shelia Smith-Lopez, Committee
 -Office of the Secretary-	