Draft elder and vulnerable adult code.

The Squaxin Island Legal Department is seeking comment from our Tribal Elders and the Squaxin Island Tribal Community. The Squaxin Island tribe has always been committed to protecting its elder and adult members, descendants, spouses and community members from abuse, neglect and financial exploitation. The proposed code allows the Tribe and its courts to do two things:

First, its states a Squaxin Island tribal vulnerable adult specialist can investigate and respond to alleged situations of abuse, abandonment, neglect self-neglect, or financial exploitation that involves an alleged victim who meets the definition of ‘vulnerable adult’ in the law. The vulnerable adult specialist refers situations that involve alleged victims who do not fall within the definition of ‘vulnerable adult’ to appropriate resources.

Second, the draft vulnerable adult code gives Squaxin Courts the power to create guardianships for adults who no longer have the ability to care for themselves.

The draft code is intended to replace and improve on the current vulnerable adult code that has been in place since January, 2016.

This is a great opportunity to voice your opinions or concerns in regards to the language used in this draft code.

Please contact Santana Krise at the Squaxin Island Legal Department with comment before July 25, 2017 at 360-432-1771 ext. 6 or skrise@squaxin.us.

**Proposed DRAFT**

**Title 12**

**Elder and Vulnerable Adult Code**



12.04.010 Title

This Chapter shall be known and cited as the “Elder and Vulnerable Adult Code.”

12.04.020 Authority

The Squaxin Island Tribal Council’s authority to adopt the ordinance codified in this Title is found in the Squaxin Island Tribal Constitution and the inherent sovereign authority of the Squaxin Island Tribe over Reservation land and its member activities.

12.04.030 Policy

Elders of the Squaxin Island Tribal Community are valued custodians of the Tribe’s history, traditions, and culture. It is the Tribe’s policy to respect the dignity of and protect the safety of its elders.

It is also the Tribe’s policy to assist, protect, and care for those adults in the community who are unable to care for themselves. Furthermore, it is the policy of the Tribe to promote harmony within families and caregiving relationships. This Chapter shall be carried out in the least restrictive manner that gives effect to these policies and it shall be liberally interpreted to do so.

12.04.040 Purpose and Scope

There are elders and vulnerable adults in the Squaxin Island Tribal Community who are at risk of exploitation, abuse, or neglect. The purpose of this Code is to protect these individuals through a system of:

 Reporting exploitation, abuse, or neglect;

1. Investigating reports of exploitation, abuse, or neglect; and
2. Providing services for elders and vulnerable adults in need of protection against exploitation, abuse, neglect, or who lack the ability to perform or obtain services necessary to maintain or establish their well-being.

12.04.050 Jurisdiction

A. The Squaxin Island Tribe and the Squaxin Island Tribal Court assert jurisdiction over the welfare and protection of elders and vulnerable adult residents of the Squaxin Island Indian Reservation, as defined under this Chapter to the fullest extent allowed by the Squaxin Island Tribal Constitution and federal law. This includes, but is not limited to, jurisdiction over elders and vulnerable adults who are:

1. Members of the Squaxin Island Tribe;

2. Eligible for membership in the Squaxin Island Tribe;

3. Members of the Squaxin Island Tribal Community and domiciled on the Reservation. Members of the Squaxin Island Tribal Community shall include spouses of members, domestic partners of members, children of members and members of other federally-recognized tribes.

B. Off-Reservation Tribal Members. For elder or vulnerable adult Squaxin Island tribal members residing off of the Squaxin Island Indian Reservation, the Presenting Officer may assist family members or the Tribe itself seeking orders of protection or guardianship from the courts of the State of Washington or any other court of competent jurisdiction.

**12.04.060 Vulnerable Adult Court**

There is established a Squaxin Island Tribe Vulnerable Adult Court. The Court shall have the powers enumerated herein, and those powers reasonable and necessary to carry out those enumerated powers consistent with the policy, purpose and scope expressed in this Chapter.

12.04.070 Civil Nature of Code

This Code is civil in nature, providing protection orders, guardianship orders and civil remedies. Criminal proceedings may run concurrently with any action under this Chapter for any violation of the Law and Order Code, SITC Title 9, which occurs in the course of elder or vulnerable adult abuse, neglect or exploitation.

12.04.080 Definitions

“Abuse” means an intentional or negligent infliction of bodily harm, unreasonable confinement, cruel punishment, unreasonable restriction on activities, intimidation, humiliation, threats, or harsh language resulting in physical harm or unreasonable emotional or psychological distress. Sexual abuse includes any contact with an elder for sexual gratification without the elder’s freely given and knowing consent.

“Caregiver” means:

1. Any person required by tribal law or custom, or state law, if applicable, to provide services or resources to an elder or vulnerable adult;

2. Any person who volunteers to provide services or resources to an elder or vulnerable adult; or

 3. An institution or agency and any employee of an institution or agency who is required by tribal law or custom, state law, if applicable, or federal law, or who is required under any other agreement to provide services or resources to an elder or vulnerable adult.

“Consent” means agreement given without intimidation or coercion by an elder or vulnerable adult with the capacity to make the agreement.

An “elder” is a person subject to the jurisdiction of the Tribe who is fifty-five (55) years of age or older.

“Emergency” is a situation in which an elder or vulnerable adult is in imminent danger of serious harm.

“Exploitation” means the unauthorized or improper use of an elder or vulnerable adult’s person or resources, or the failure to use an elder or vulnerable adult’s resources for the elder or vulnerable adult’s benefit. Exploitation includes but is not limited to:

1. Any unauthorized use or occupation of the elder or vulnerable adult’s residence, property, utility services, food, or money;

 2. Any use of an elder or vulnerable adult’s resources that exceeds the authorization he or she has given, or authorization given by orders of any court.

“Family” for purposes of this Chapter, means any member of the elder or vulnerable adult’s nuclear family. For this Chapter, “nuclear family” includes spouses, fathers, mothers, children, and siblings of the elder or vulnerable adult.

“Guardian of Estate” or “Limited Guardian of Estate” means an individual or professional organization whose rights, powers, and duties over an elder or vulnerable adult to care for the property and finances have been specifically ordered by operation of law.

“Guardian of Person” or “Limited Guardian of Person” means an individual or professional organization whose rights, powers, and duties over an elder or vulnerable adult’s day-to-day living arrangements, health care, education, and other matters related to their comfort and well-being have been specifically ordered by operation of law.

“Guardian ad litem” means a person appointed by the Court to represent the best interests of an elder or vulnerable adult during the pendency of any action under this Chapter. A guardian ad litem shall be free of influence from anyone interested in the result of the proceeding, and shall have the knowledge and willingness to perform the duties required of a guardian ad litem under the Chapter.

“Incapacitated” means at risk for physical, emotional, or financial harm based upon a demonstrated inability to adequately provide for one’s nutrition, health, housing, physical safety or financial protection without Court-ordered assistance.

“Least restrictive manner” means providing services or resources allowing an elder or vulnerable adult the maximum independence and freedom from intrusion consistent with their needs by requiring that the least restrictive method of intervention be used when intervention is necessary and that only those services or resources that are reasonably necessary to protect the elder or vulnerable adult are provided.

“Neglect” is the failure of a caregiver to provide for the basic needs of an elder or vulnerable adult by not supplying adequate resources, services, or supervision necessary to maintain their physical and mental health or by interfering with the delivery of such resources or services. Such resources and services include but are not limited to shelter, food, clothing, medication, medical services, and personal care such as assistance with hygiene and dressing. Neglect is also failing to take appropriate steps to prevent physical or psychological pain or injury inflicted upon an elder or vulnerable adult by a third party. The determination of neglect includes an assessment of an elder or vulnerable adult’s own ability to provide for his or her basic needs.

“Protective Payee” is the person or organization appointed by the Court to receive, manage, and disburse the following types of funds for the benefit of an elder or vulnerable adult: (1) per capita payments from the Tribe; (2) elder dividend payments from the Tribe; (3) assistance based on need payments from the Tribe; and (4) any other cash benefits from the Tribe; (5) any other income or financial benefit received by the elder or vulnerable adult .

“Protective services” shall include services such as assistance in obtaining food, clothing, shelter, medical care, or personal care; counseling or training for management of personal affairs; assistance with obtaining civil remedies, such as obtaining restraining orders or restitution; and arrangements for alternative living quarters, either temporary or permanent.

“Retaliation” is intimidating or threatening a reporter of elder or vulnerable adult abuse or a reporter’s family in any way; physically harming a reporter or a reporter’s family; causing a reporter a member of a reporter’s family to be terminated, suspended, or reprimanded by an employer; or damaging the real or personal property of a reporter or a reporter’s family.

“Respondent” means the party on the other side. The respondent may be the elder, vulnerable adult, or other persons ordered by the Court to perform or restrain from committing certain acts.

“Tribe” means the Squaxin Island Tribe.

“Vulnerable adult” means a person who is subject to the jurisdiction of the Tribe who is:

 1. A person who has been determined by the Squaxin Island Tribal Court to be in need of a guardianship, either full or partial, temporary or permanent, and at the time of any petition for orders of protection under this code are in such a guardianship;

2. A person who has a disability attributable to mental disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by a physician to be closely related to mental disability, which originates before the individual attains age 18, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual. The Tribe may adopt criteria which define neurological or other conditions under this subsection in a way that is not limited to intelligence quotient scores as the sole determinant of these conditions; or

3. A person admitted to any long-term facility or receiving services from health, hospice, or home care agencies; or

4. Any individual who is the subject of an open investigation or open proceeding under this Title whose incapacity has not yet been determined.

**Subchapter I – Reporting and Investigation of Suspected Abuse, Exploitation or Neglect of Elders and Vulnerable Adults**

12.04.090 Vulnerable Adult Protection Program and Vulnerable Adult Court

There is established, within the Squaxin Island Family Services Department, a Vulnerable Adult Protection Program (“VAPP”) to implement the provisions of this Chapter. The Department shall engage such workers as are necessary to carry out the duties and responsibilities set forth in this section.

12.04.100 Vulnerable Adult Protection Worker (VAPW)

A. Appointment. The Family Services Director shall appoint one or more Vulnerable Adult Protection Worker(s) to carry out the duties and responsibilities of the VAPP set forth in this code.

B. Duties. The Vulnerable Adult Protection Worker shall:

1. Receive, respond to and/or refer complaints regarding vulnerable adults.

2. Make such investigations, in coordination with the Squaxin Island Tribal Police, as are required by the provisions of this Title.

3. Provide goods and/or services as may be required to implement the provisions of this Title. [ALTERNATIVE LANGUAGE: “Ensure that goods or services required to implement the provisions of this Chapter are provided to the vulnerable adult.”]

4. Maintain case files documenting the status of each case including; all goods and services provided and/or sought on behalf of any individual; all actions taken to comply with Court orders; the status of an individual’s compliance with a Court order and actions taken to ensure compliance; and all pleadings, reports and recommendations.

5. Develop case and data management protocols that comply with relevant funding and legal requirements.

6. Actively participate in the Vulnerable Adult Protection Team (VAPT), including the following:

a. Confer and coordinate with the VAPT on case planning decisions, compliance with Court orders, and needs and concerns relative to any individual as necessary to fully implement this Title.

b. Provide written reports and recommendations, including the status of an individual’s compliance with Court orders and actions taken to ensure compliance, to the VPT for those matters referred to the VPT, no less than 7 days prior to each scheduled Court proceeding.

7. Present written or oral testimony as requested by the presenting officer.

8. Make such reports to the Court or Tribal Council as are required by the provisions of this Title relating to elders or vulnerable adults.

C. Duties Not Performed. The Vulnerable Adult Protection worker shall not be employed as, nor perform the duties of, prosecutor, presenting officer, or law enforcement official, except that the VAPW may serve as presenting officer in a review hearing or in non-contested hearings.

12.04.110 Presenting Officer

A. Designation. Attorneys employed by or engaged by the Squaxin Island Tribe’s Legal Department shall be designated by the director of the legal department as presenting officers to carry out the duties and responsibilities set forth in this title.

B. Duties. The presenting officer shall:

1. File such petitions, responses and pleadings with the Court as necessary or desirable to implement this Title;

2. Represent the Tribe in all proceedings under this Title; and

3. Perform such other duties as Tribal Council or this Title may require.

12.04.120 Duty to Report Abuse, Neglect or Exploitation

A. Any person who knows or has reason to suspect that an elder or vulnerable adult is being or has been abused, neglected or exploited has a duty to report the abuse, neglect or exploitation to the Vulnerable Adult Protection Program and/or the Squaxin Island Public Safety Department. Failure of the following people to report suspected abuse, neglect or exploitation may result in a civil penalty of up to $500:

1. A caregiver;

2. An elected official of the Tribe;

3. Any medical doctor or physical therapist, including but not limited to a physician, osteopath, chiropractor, podiatrist, coroner, acupuncturist, naturopathic doctor, or medical examiner;

4. A nurse, physician’s assistant or health aide;

5. A dentist or dental hygienist;

6. A family services representative, Vulnerable Adult Protection Worker or elder services provider;

7. A mental health practitioner or counselor;

8. A law enforcement officer; and

9. Any person with a fiduciary duty to the vulnerable adult, including but not limited to an accountant, guardian, or property manager.

B. The Tribal Court will assess a penalty only after petition, notice, opportunity to be heard, and a determination that the person had at least reason to suspect the abuse, neglect or exploitation of the elder or vulnerable adult and failed to report it as required by this Chapter.

C. No evidentiary privilege except attorney-client privilege may be raised as a defense or reason for failing to report suspected abuse, neglect or exploitation.

D. Confidentiality. The identity of a person who in good faith reports suspected elder or vulnerable adult abuse, neglect, or exploitation is confidential and shall not be released unless the reporter consents or the Tribal Court orders the release because it finds, after notice to the reporter and a closed hearing, that the need to protect the vulnerable adult clearly outweighs the reporter’s interest in confidentiality.

12.04.130 Consequences of Reporting

A. Good Faith. Any person, except a perpetrator, who in good faith reports suspected abuse, neglect or exploitation of a vulnerable adult, is immune from any civil suit or criminal charges based on the report.

B. Bad Faith. Any person who makes a report of abuse, neglect or exploitation of a vulnerable adult knowing the report is false or unfounded is subject to a civil penalty of up to $500, up to twenty-five (25) hours of community service, or both.

C. The Tribal Court will assess the penalty only after petition, notice, opportunity to be heard, and a determination that the person made the report knowing it was false or unfounded. A person who gives a bad faith report is also subject to any criminal penalties set forth in the Criminal Code.

12.04.140 Investigation and Written Report

A. Investigation. The VAPW shall promptly and thoroughly investigate a report of suspected abuse, neglect or exploitation to determine whether the elder or vulnerable adult needs protective services. If the initial report to the VAPP or the Squaxin Island Public Safety Department indicates that the elder or vulnerable adult may be in imminent danger of serious harm, an initial investigation shall be completed within twenty-four (24) hours by officers from the Public Safety Department with a follow up report to be written by the VAPW. If the initial report to the VAPP or the Squaxin Island Public Safety Department indicates that the elder or vulnerable adult is not in imminent danger of serious harm, the initial investigation shall be completed within fifteen (15) days. The investigation shall include information such as:

1. Personal interviews with the elder or vulnerable adult, as well as the individual’s caregiver and immediate family, people living in the individual’s residence, people suspected of committing the acts reported, employees of agencies with knowledge of the individual’s circumstances, and/or any other person who may have relevant information; Medical records, to the extent possible, and any other evidence of abuse, neglect, or exploitation;

2. Assessment of the individual’s living conditions, using the Tribe’s general housing standards; and

3. Any other observations or documents that may help in the completion of an accurate report.

B. Written Report. The VAPW shall prepare a written report of any investigation and keep it on file for ten years, even if the VAPW determines that abuse, neglect or exploitation has not occurred in the reported instance. The report shall contain the results of interviews, observations, and all other information obtained in Subsection (A), and:

1. The elder or vulnerable adult’s name, address or location, and telephone number;
2. The name, address or location, and telephone number of the person(s) suspected of abusing, neglecting, or exploiting the elder or vulnerable adult;
3. The current condition of the elder or vulnerable adult, including the suspected nature and degree of incapacity, if any;
4. The name, address or location, and telephone number of any witness(es);
5. The name, address or location, and telephone number of the elder or vulnerable adult’s caregiver;
6. A description of the acts thought to be abuse, neglect or exploitation; and
7. Any other information the reporter believes might be helpful in determining abuse, neglect or exploitation.

C. Imminent Danger of Serious Harm. If the initial investigation indicates that the elder or vulnerable adult has been the victim of abuse, neglect or exploitation and that they may be in imminent danger of serious harm, the written report shall be filed immediately with the Presenting Officer and a copy shall be provided to the VAPT. Upon receipt of the written report, the Presenting Officer shall file for a vulnerable adult protection order pursuant to Section 12.04.190.

D. No Imminent Danger of Serious Harm. If the investigation leads the VAPW to believe that the elder or vulnerable adult has been the victim of abuse, neglect or exploitation but that the individual is not in imminent danger of serious harm, the VAPW shall file a written report with the VAPT and a copy shall be provided to the tribal attorney.

E. Records of investigation are confidential and may be viewed only by the employees of the VAPP, Public Safety Department officers, the tribal attorney, parties to the particular hearing before the Tribal Court, employees of the state adult protect services agency, and those people the Tribal Court determines have reasonable cause to view them.

F. Public Safety Department Officers. If an initial report of harm is filed during hours the VAPW is not available and if it appears that the elder or vulnerable adult may be in imminent danger of serious harm, the responding police officer shall perform the duties of the VAPW to the extent possible and necessary.

12.04.150 Voluntary Protective Services

Protective services will be provided through the VAPP on a voluntary basis (A) when requested by any elder or vulnerable adult who the VAPP determines to be in need or (B) when consented to by a non-incapacitated elder or vulnerable adult who the VAPP determines to be in need.

12.04.160 Retaliation and Interference with Investigation Prohibited

No person shall retaliate against a reporter or anyone who cooperates with an investigation, and no person shall otherwise intentionally interfere with an investigation of suspected abuse, neglect or exploitation of any person under this code. Any person who retaliates or interferes with an investigation is subject to an injunction and a civil penalty of up to $500 per occurrence. The Tribal Court will assess a penalty only after petition, notice, opportunity to be heard, and a determination that acts of retaliation or intentional interference have been committed. Notwithstanding this provision, such retaliation or interference may also be charged under applicable provisions of other codes.

**Subchapter II –The Vulnerable Adult Protection Team (VAPT)**

12.04.170 The Vulnerable Adult Protection Team and Decision Making

A. Composition. The VAPT shall be composed of all VAPWs, the Family Services Director, the Elders Program Director, the Presenting Officer, Law Enforcement Director, Behavioral Health Outpatient Program Director and the Health Clinic Director. Each above-listed individuals may designate a representative to sit on the VAPT in their place.

B. Powers and Responsibilities of the Vulnerable Adult Protection Team. The VAPT shall have the power and responsibility to:

1. Promote respect for and protection of elders and vulnerable adults within the community;
2. Monitor and assess the treatment of elders and vulnerable adults;
3. Evaluate existing available tribal, state and federal services for the benefit of elders and vulnerable adults; and,
4. Evaluate the reports of VAPWs on individual elders and vulnerable adults and make recommendations to the VAPW for appropriate protective orders and services and an individual’s protection plan.

C. Meetings. The VAPT shall meet at least once a month, on a regular date. Meetings may be held electronically, through videoconference, teleconference, or other means of meeting electronically.

**Subchapter III – Protection Orders**

**12.04.180 Voluntary Protection Orders for Elders and Vulnerable Adults**

A. Who May File. Any elder or vulnerable adult, or the Presenting Officer on their behalf and with their consent, may seek relief under this Chapter by filing a petition with the Tribal Court.

B. Voluntary Protection Order Petition. The petition shall include the name and the address or location of the elder or vulnerable adult; a description of their situation; the proposed protective services; and any other facts that will assist the Tribal Court in determining whether an emergency exists. The Petition shall also note whether the elder or vulnerable adult is seeking a temporary *ex parte* order.

C. Emergency Temporary *Ex Parte* Order. The Tribal Court shall issue an *ex parte*, emergency temporary vulnerable adult protection order if petitioner requests one and the petition establishes by probable cause that the elder or vulnerable adult is in imminent danger of serious harm or abuse, exploitation or neglect.

D. Denial of Request for Temporary *Ex Parte* Order. If a petitioner requests and the court declines to issue an *ex parte* temporary emergency vulnerable adult protection order, the judge shall state the particular reasons for the denial and set a hearing within 4 days of the denial to address the reasons for the denial and entertain reconsideration of the denial. The denial hearing may be telephonic and if the judge believes a shorter hearing time is needed, it may be set at any time up to 4 days at the discretion of the court.

E. Voluntary Petition Full Hearing. If the Court issues an emergency temporary ex-parte protection order, the Clerk of Court shall set a hearing within 14 days of entry of the temporary *ex parte* order. If the elder or vulnerable adult is not requesting an emergency temporary protection order, or the Tribal Court finds there is no imminent danger, the Clerk of Court shall set a hearing, no later than 30 days.

F. Service Not Perfected. If service on respondents has not occurred prior to the full hearing, the Court may continue to the full hearing to allow service to be accomplished, either personally or by publication if the court authorizes. The court shall extend any temporary ex parte protection orders until the date and time of the continued hearing.

G. Failure to Appear by Petitioner. If a petitioner fails to appear at the full hearing, any temporary *ex parte* protection orders will expire and the petition will be dismissed, unless the Presenting Officer or other person demonstrates good cause to continue the full hearing and extend temporary *ex parte* orders.

H. Standard of Proof for Permanent Order. Upon notice and after hearing, the Tribal Court shall issue a permanent vulnerable adult protection order authorizing protective services upon a finding by a preponderance of the evidence that the elder or vulnerable adult has been abused, neglected or exploited, or is in imminent danger of serious harm, abuse neglect or exploitation.

I. Relief. The Tribal Court may order the following relief:

1. The Court may order the VAPP to develop and administer a vulnerable adult protection plan;
2. The Court may remove the elder or vulnerable adult from the location where they had been harmed to a location where they can be protected;
3. The Court may remove the person(s) who have harmed the elder or vulnerable adult from the elder or vulnerable adult’s home;
4. The Court may issue a restraining order against the person(s) who have harmed the elder or vulnerable adult;
5. The Court may require any person with a fiduciary duty to the elder or vulnerable adult to account for the elder or vulnerable adult’s funds or property;
6. The Court may order any person who has abused, neglected or exploited an elder or vulnerable adult to pay restitution for damages resulting from the abuse, neglect or exploitation;
7. The Court may appoint a protective payee to manage the income of the elder or vulnerable adult, provided however that the fees for a protective payee shall be deducted from the income or other funds of the elder or vulnerable adult or paid by a person or entity other than the Squaxin Island Tribe. The VAPP shall confirm that rates charged by a proposed protective payee are within industry standards; and
8. The Court may order other relief as it deems necessary for the protection of the elder or vulnerable adult, including orders or directives to the Public Safety Department, in conformity with the standard operating procedures of the Public Safety Department.

12.04.190 Involuntary Protection Orders

A. Who May File.

1. Any person may seek the relief provided in this Section on behalf of any elder or vulnerable adult, provided however that any Involuntary Protection Order Petition filed under this provision be personally served on the Presenting Officer to facilitate an investigation and a written report in accordance with Section 12.04.140.

2. The Presenting Officer may seek the relief provided in this Section on behalf of any elder or vulnerable adult after the completion of an investigation and a written report in accordance with Section 12.04.140, and by filing for an Involuntary Vulnerable Adult Temporary Protection Order.

B. Involuntary Protection Order Petition. The petition shall include the name and the address or location of the elder or vulnerable adult; a description of their situation; the proposed protective services; and any other facts that will assist the Tribal Court in determining whether an emergency exists. The Petition shall also note whether the elder or vulnerable adult is seeking a temporary *ex parte* order.

C. Emergency Temporary Involuntary *Ex Parte* Order. The Tribal Court shall issue an *ex parte*, emergency involuntary temporary protection order if petitioner requests and the petition establishes by probable cause that the elder or vulnerable adult is in imminent danger of serious harm, abuse, exploitation or neglect.

D. Denial of Request for Temporary Involuntary *Ex Parte* Order. If a petitioner requests and the court declines to issue an *ex parte* temporary emergency vulnerable adult protection order, the judge shall state the particular reasons for the denial and set a hearing within 7 days of the denial to address the reasons for the denial and entertain reconsideration of the denial. The denial hearing may be telephonic.

E. Involuntary Petition Full Hearing. The Court shall hold a hearing on an involuntary protection order petition within 14 days of filing of the petition. Whether service on respondents have been completed or not, the elder or vulnerable adult may move to dismiss the petition. If after considering testimony on the motion, the court believes probable cause still exists, the full hearing shall go forward.

F. Service Not Perfected. If service on respondents has not occurred prior to the full hearing, the Court may continue to the full hearing to allow service to be accomplished, either personally or by publication is the court authorizes. The court shall extend any temporary ex parte protection orders until the date and time of the continued hearing.

G. Standard of Proof for Permanent Order. Upon notice and after hearing, the Tribal Court shall issue a permanent vulnerable adult protection order authorizing protective services upon a finding by a preponderance of the evidence that the elder or vulnerable adult has been abused, neglected or exploited, or is in imminent danger of serious harm, abuse neglect or exploitation.

H. Relief. The Tribal Court may order the following relief:

1. The Court may order the VAPP to develop and administer a vulnerable adult protection plan;

2. Access to and removal of elder or vulnerable adult. The Court may remove the elder or vulnerable adult from the location where they had been harmed to a location where they can be protected. The Tribal Court may issue a warrant for forcible entry to gain access to a vulnerable adult if attempts to gain voluntary access have failed. If a VAPP representative or law enforcement officer has good cause to believe that a vulnerable adult is at risk of immediate or irreparable harm upon personal observation, the VAPP representative or law enforcement officer may immediately protect the vulnerable adult, including by transporting the vulnerable adult to a different location. As soon as the investigator or officer has acted to protect the vulnerable adult, standard emergency protection order procedures must be followed;

3. The Court may remove the person(s) who have harmed the elder or vulnerable adult from the elder or vulnerable adult’s home;

4. The Court may issue orders of restraint against the person(s) who have harmed the elder or vulnerable adult;

5. The Court may require any person with a fiduciary duty to the elder or vulnerable adult to account for the elder or vulnerable adult’s funds or property;

6. The Court may order any person who has abused, neglected or exploited an elder or vulnerable adult to pay restitution for damages resulting from the abuse, neglect or exploitation;

7. The Court may appoint a protective payee to manage the income of the elder or vulnerable adult, provided however that the fees for a protective payee shall come out of the income of the elder or vulnerable adult, or some other person other than the Squaxin Island Tribe. The VAPP shall confirm that rates charged by a proposed protective payee are within industry standards; and

8. The Court may order other relief as it deems necessary for the protection of the elder or vulnerable adult, including orders or directives to the Public Safety Department in conformity with the standard operating procedures of the Public Safety Department.

12.04.200 Initial Term and Extension of Voluntary and Involuntary Protection Orders

A voluntary or involuntary protection order shall remain in effect for six (6) months, after which it may be extended as many times as necessary to protect the vulnerable adult, including extended indefinitely. It shall be extended upon petition, notice, opportunity to be heard, and a determination based on a preponderance of the evidence that an extension is necessary to protect the elder or vulnerable adult.

**12.04.210 Service**

A. Personal Service. If respondents live within the Squaxin Island Indian Reservation, reasonable efforts must be made to personally serve them.

B. Who May Serve. Personal service shall be conducted by the Squaxin Island Public Safety Department, unless the Petitioner notes in the petition that they intend to personally serve the Respondents themselves.

C. Service by Publication and/or Mail. If respondent resides off of the Squaxin Island Reservation, service by mail via United States Postal Service to their last known address may be used. If respondent resides on the Squaxin Island Indian Reservation, but attempts to personally serve them have failed, service by mail and by publication may be authorized. Service by mail shall be perfected if mailed within 10 days of the full hearing. Service by publication shall be perfected by being posted at the Squaxin Island Tribal Administration Building and by publication in the Klah-Che-Min Newsletter at least 20 days prior to the full hearing.

12.04.220 Rights of Elders and Vulnerable Adults, Their Families and Caregivers During a Hearing

A. The elder or vulnerable adult and caregiver if one exists, shall receive personal service of any petition filed under this Chapter. Service by mail or publication on the elder or vulnerable adult and caregiver, if one exists, may not be accomplished by mail or publication.

B. The elder or vulnerable adult, and the individual’s family and caregiver may attend any proceedings pertaining to the petition.

C. The elder or vulnerable adult has the right to be represented by counsel or a spokesperson at all proceedings at their expense.

D. The elder or vulnerable adult, and the individual’s family or caregiver has the right to seek independent medical or psychological evaluations at their own expense, to present any other evidence, to cross-examine witnesses, and to remain silent.

E. Confidentiality. All Court proceedings under this Chapter shall be confidential and closed to the public. The elder or vulnerable adult, their family and/or caregiver, the suspected perpetrator(s), Tribal Court officials, employees of the VAPP, and the parties’ attorneys may attend. Other people may attend only to testify.

**Subchapter IV – Vulnerable Adult Protection Plan and Protective Services.**

12.04.230 Vulnerable Adult Protection Plan

A. Pursuant to an order of the Tribal Court. If the Tribal Court determines that an elder or vulnerable adult needs protective services, the VAPP shall write a plan for provision of those services necessary to provide for their basic needs in the least restrictive manner available. A VAPP representative shall serve the plan on all interested parties and file the plan with the Court for adoption. The plan shall remain in effect for a fixed time.

B. Pursuant to voluntary agreement. If an agreed upon protection plan is created pursuant to an agreement of the parties, it shall be set forth in writing, including any conditions or requirements to be performed, and cover a fixed period. The elder and vulnerable adult and/or their Court appointed guardian, their family and their caregiver shall sign the voluntary agreement and/or protection plan.

12.04.240 Services for the Family or Caregiver

The vulnerable adult protection plan shall include services for family or caregiver as necessary to protect the elder or vulnerable adult. Necessity shall be determined by the VAPP in cases of voluntary services, or by the Tribal Court in cases of a protection order.

12.04.250 Payment for Services

After providing notice and an opportunity to be heard, the Tribal Court may order an individual found to have abused, neglected, or exploited an elder or vulnerable adult to pay the cost of services required by the elder or vulnerable adult as a result of that abuse, neglect or exploitation.

**Subchapter V – Elder and Vulnerable Adult Guardianships**

**12.04.260 Guardianship Petition**

Any nuclear family member, or the Presenting Officer, may file a petition for limited or full guardianship of an elder (55 years old or older) or vulnerable adult over the age of 18 and residing on the Squaxin Island Indian Reservation, or in an institution on or off the Squaxin Island Indian Reservation, who is unable to manage his or her own affairs. A petition for limited or full guardianship shall state:

* + 1. The name or names, birthdate, residence, tribal affiliation and enrollment number of the elder or vulnerable adult and, if they are not living in his or her own home, locations where the person has resided since leaving his or her own home, and the name and address of the person(s) or institution where the elder or vulnerable adult is now located;
		2. The name, birthdate, residence and tribal affiliation, if any, of the petitioner (or interested person) and the petitioner’s relationship to the elder or vulnerable adult;
		3. A description of the physical and mental problems or limitations that make the elder or vulnerable adult unable to manage his or her own affairs;
		4. A doctor’s report or letter, under oath, to the effect that the vulnerable adult is not presently able to handle his or her property affairs, and the anticipated duration of the incapacity;
		5. If limited or full guardianship of any or all of such property is requested, a general description of the personal or non-trust property of the elder or vulnerable adult;
		6. If limited or full guardianship over any or all of the financial affairs is requested, a general description of the income or other financial resources or personal property of the elder or vulnerable adult;
		7. The names, addresses and relationship of the elder’s or vulnerable adult’s spouse and children and, as long as such information is reasonably available, the names, addresses and relationship to the elder or vulnerable adult of any brothers, sisters, grandchildren, or other parties who have been significantly involved in the care of the elder or vulnerable adult during the past three years;
		8. Whether or not a limited or full guardian has been appointed for the elder or vulnerable adult in any state or tribal court and whether or not the person has given power of attorney over his or her affairs to any individual;
		9. The specific areas over which the petitioner is seeking limited guardianship and the requested length of time for which the petitioner wishes limited guardianship over the elder or vulnerable adult;
		10. What other interested person(s), if any, may be available to share limited or full guardianship responsibilities with the petitioner and their relationship to the elder or vulnerable adult.

**12.04.270 Service of petition and Notice of Hearing**

* + 1. Before appointing a limited or full guardian, Notice of Hearing and a copy of the petition shall be personally served on:

1. The elder or vulnerable adult for whom limited or full guardianship is requested;

2. Children of the elder or vulnerable adult, spouse, and/or guardian (if applicable);

3. On the VAPP through personal service on the Squaxin Island Legal Department.

B. If personal service is not able to be made after reasonable efforts, a motion may be made to the Court for an alternative means of service such as by certified mail, or by publication.

C. The VAPW shall file information with the Court that may be relevant to appointment of a guardian. This information shall be filed under seal and the Court shall disseminate this information to the parties as it deems necessary and appropriate.

D. Hearing on the petition shall be held not less than 20 and not more than 40 days from service of the notice and petition on the elder or vulnerable adult over whom limited or full guardianship is requested unless good cause is shown.

E. In the event of an emergency, where serious harm to the elder’s or vulnerable adult’s health or property is likely to occur before such hearing can be held, the Court may appoint a temporary limited or full guardian or guardian ad litem upon the Court’s own motion with authority to respond to the emergency. Such authority will extend only so long as is necessary to respond to the emergency.

**12.04.280 Hearings**

A. The elder or vulnerable adult named in the petition shall be present at all hearings unless the person files a declaration with the Court requesting that the hearing proceed without them or the person is incapacitated and unable to appear as documented by a physician, or if a guardian ad litem files an affidavit with the Court stating that either:

1. Counsel or the guardian ad litem has fully explained the nature of the hearing to the elder or vulnerable adult and to the best of their belief the elder or vulnerable adult has understood the nature of the hearing and has clearly expressed a desire not to be present; or

2. That to the best of their information and belief, the elder is incapable of understanding the nature of the hearing or participating in the hearing.

B. Upon a finding from the affidavit or declaration that the elder or vulnerable adult cannot participate in the hearing or hearings, the Court may waive the appearance of the person; provided, that the counsel or guardian ad litem is present at every hearing on the merits of the petition, in the person’s behalf.

C. At the hearing, the Court shall examine the petition; determine the need to have a guardian appointed by taking such testimony as any interested party wishes to present.

D. Upon presenting this evidence, the petitioner must prove by preponderance of evidence that:

1. The elder or vulnerable adult is unable to manage his or her own affairs due to:

a. Loss of memory or reasoning ability;

b. Acute alcoholism, abuse or dependency of prescription drugs, or abuse or dependency of illegal drugs;

c. Mental illness;

d. Is incapacitated; or

e. Other medical condition.

2. The elder or vulnerable adult lacks the ability to manage his or her own affairs to such a degree that the person’s personal health, personal security or financial security are measurably threatened; and

3. There are no less restrictive alternatives available to remedy the evidence presented in this subsection.

E. The Court shall make specific findings as to the above.

**12.04.290 Appointment**

If the Court determines pursuant to this section that a limited or full guardianship is necessary to protect the person or property of the elder or vulnerable adult, the Court shall further make written findings as to whether or not the limited or full guardianship should be shared among family members for the elder’s or vulnerable adult’s wellbeing. If it appears in the best interest of the elder or vulnerable adult, and if more than one family member agrees to share the limited or full guardianship responsibilities, the Court may enter an order appointing more than one limited or full guardian. The preference of the elder or vulnerable adult as contained in unrevoked durable power of attorney, or otherwise clearly stated, shall control selection of a limited or full guardian or guardians except for good cause or disqualifications.

**12.04.300 Scope of Guardianship**

A. The Court shall make further written findings and order as to the extent of the guardianship over the person or property of the elder or vulnerable adult. The powers shall extend only to such areas specifically stated in the findings and order and such powers shall be no more extensive than is necessary to address the specific facts proven by the petitioner.

B. The order shall further state that the elder or vulnerable adult may not be placed in a nursing home without the express consent of the Court and after notice to the elder protection team/program.

**12.04.310 Appointment of Counsel or Guardian Ad Litem for Elder or Vulnerable Adult**

Within 10 days of the filing of a petition for limited or full guardianship of an elder or vulnerable adult, the Court may appoint legal counsel or, if more appropriate, a guardian ad litem for the elder or vulnerable adult in extraordinary circumstances. If it appears from the petition and any medical report attached thereto or submitted to the Court that the elder or vulnerable adult appears not to be able to assist counsel or participate verbally in his or her own defense to the limited or full guardianship, then the Court may appoint guardian ad litem instead of legal counsel. Appointment of legal counsel or a guardian ad litem is dependent on available Court funds.

**12.04.320 Filing inventory of income and property**

A. Persons appointed limited or full guardian over the income or personal or non-trust real property of the elder or vulnerable adult shall file an inventory with the Court of all such income or personal or non-trust real property prior to the appointment or such time as may be extended by the Court upon a showing of good cause for requesting such extension.

B. The Court may require limited or full guardianship funds be placed into a judicially-blocked account or bank account.

**12.04.330 Appointment of Protective Payee**

A. The Court may appoint a protective payee instead of a guardian of estate if the Court finds that lesser restrictive alternative is more appropriate.

B. The Court may appoint a protective payee in addition to a guardian of estate if the Court finds that it is in the best interest of the elder or vulnerable adult to have a 3rd party administer the income of the ward.

C. The cost of any appointment of a protective payee shall be borne by the elder or vulnerable adult’s estate or income, unless another source of funding is identified. The Court shall not, in any case, bear the cost of the protective payee. The VAPP shall confirm that rates charged by a proposed protective payee are within industry standards.

**12.04.340 Review of guardianship**

A. The Court shall review all limited or full guardianships every six months for the first year after the appointment of a limited or full guardian or guardians and thereafter every year unless more frequent review appears in the best interest of the elder or vulnerable adult.

B. A limited or full guardian with authority over an elder’s or vulnerable adult’s income or property shall report and file an accounting of their income and other resources and any transfers of their personal property.

C. A limited or full guardian with authority over health and welfare decisions shall report on the health and welfare decisions of the elder or vulnerable adult including living conditions, diet, and attention by caregivers, medications and medical treatment. If it appears the limited or full guardian is in need of more assistance in caring for the elder or vulnerable adult, the matter shall be referred to the VAPP for a report and recommendations as to how existing services may better serve the needs of the elder and the limited or full guardian. Such recommendations shall be made in a report filed with the Court after consultation with the limited or full guardian and the report should be filed with the Court and copies provided to the limited or full guardian. The limited or full guardian shall indicate on the report or in a separate written statement their agreement or disagreement with the report.

D. The limited or full guardian shall appear in person for all Court reviews and shall also file a written report documenting the status of the elder or vulnerable adult at the time of the review hearing. Updated financial information must also be provided to the Court.

**12.04.350 Termination of guardianship**

A. Failure to file an initial inventory, or to appear and file a written report at the time of a regularly scheduled review, shall constitute grounds for terminating the limited or full guardianship; provided, that the limited or full guardian is given 30 days’ notice and an opportunity to request a rescheduling of their appearance and/or file a late report within such period to avoid termination of the limited or full guardianship.

B. A finding of failure to fulfill limited or full guardianship duties in a reasonable and responsible manner after hearing shall be cause to terminate the limited or full guardianship. Hearing on the proposed termination may be filed on the Court’s own motion or on the motion of any interested party and shall be scheduled no less than 15 days from service of the motion on the limited or full guardian.

C. The limited or full guardianship shall automatically terminate on the death of an elder or vulnerable adult, or until discharged by the Court. The guardian shall provide an accounting of resources and property to the Court at a hearing upon the death of an elder or vulnerable adult.

D. If the Court terminates a limited or full guardianship and the elder or vulnerable adult continues to be in need of a guardian the Court will order the case manager(s)/elder protection team to provide services to protect and care for the health, safety, and welfare of the elder or vulnerable adult. Services may include ordering the Tribe to serve as the protective payee for resources.

**12.04.360 Securing medical service and authorizing medical treatment**

A.A limited or full guardian having medical decision making authority over the person has the duty to ensure the maintenance of the person’s health. This includes not only the duty to react to any medical situations which demand attention, securing and authorizing necessary medical treatment, but also the duty to ensure the person receives regular preventive medical and dental services. If the person is a resident of a facility or a patient in a hospital the limited or full guardian shall periodically examine the medical records of the ward and speak with attending physician(s) and other caregivers to ensure that the person is receiving proper and necessary medical care.

B. A limited or full guardian having appropriate authority shall consider the following factors when called upon to make a medical decision for an elder or vulnerable adult:

1. Any wishes of the elder or vulnerable adult, expressed prior to appointment of a limited or full guardian, including but not limited to wishes expressed in a living will, durable power of attorney, or any other oral or written declaration of intent;

2. Whatever knowledge the limited or full guardian has of the elder or vulnerable adult; what he or she believes the elder or vulnerable adult would have wanted if able to make the decision;

3. The current wishes of the elder or vulnerable adult;

4. The perceived best interests of the elder or vulnerable adult;

5. Traditional cultural or religious practices or beliefs of the elder or vulnerable adult and their family.

In determining any of the above factors, the limited or full guardian should consider information arising out of personal contact with the elder or vulnerable adult, information arising out of the contact of family or close friends with the elder or vulnerable adult, information and opinions given by attending physician(s), and/or relevant medical professionals, opinions of leaders of the person’s religion, and other relevant information.

C. Certain medical interventions if performed without anesthesia or with only a local anesthetic may be authorized by the limited or full guardian alone, considering the factors listed above in subsection (B) of this section. This subsection applies to the following medical interventions:

1. Diagnostic physical examinations;

2. Eye examinations;

3. Limited use of x-rays;

4. Routine dental examinations, such as teeth cleaning, fillings, etc.;

5. Physical therapy;

6. Medications both nonprescription, such as aspirin, cold medications, and vitamins, and uncontroversial, recommended prescription drugs, unless the limited or full guardian has cause to believe such prescription drugs are inappropriate for medical or cultural reasons;

7. Routine low-risk immunizations.

**12.04.370 Disposition of property**

A. A limited or full guardian, having the appropriate authority, shall not sell, encumber or otherwise transfer non-trust real or trust property of an elder or vulnerable adult, or an interest therein, unless such transfer is approved by the Court or by such other court as may have jurisdiction.

B. A limited or full guardian shall not prepare or have prepared by another a will on behalf of the elder or vulnerable adult for any property, including trust property, without an order of the Court.

C. A limited or full guardian appointed by any tribal or state court shall not under any circumstances be considered to have authority to sell, encumber, or otherwise transfer traditional items of personal property owned by the elder or vulnerable adult, including, but not limited to, regalia, beadwork and basketry, unless authorized by the Court.

D. A limited or full guardian, only if court ordered, shall transfer personal property of the elder or vulnerable adult only when such transfer is in the best interest of the elder or vulnerable adult, as described in subsection (E) of this section.

E. In considering whether or not the sale of fee land or personal property is in the best interest of an elder or vulnerable adult, the Court shall consider:

1. Ability of the sale of the property to improve the life of the elder or vulnerable adult;

2. The likelihood that the elder or vulnerable adult will need or benefit from the property in the future;

3. The current desires of the elder or vulnerable adult with respect to the sale of the property;

4. The ability of the elder or vulnerable adult to maintain the property;

5. The availability and appropriateness of alternatives to the sale of the property;

6. The likelihood that such property may deteriorate or be subject to waste, if not sold;

7. The benefit versus the liability and costs of maintaining the property;

8. Such other factors that may exist in the particular instance.

F. Limited or full guardians may have access to monies or other resources belonging to the elder, if available, in order to provide for the necessary care of the elder or vulnerable adult.

**12.04.380 Disputes**

Any disputes regarding the care of an elder or vulnerable adult shall be resolved as to the best interests of the elder or vulnerable adult under Squaxin Island tribal law.

**12.04.390 Guardianship records**

The Clerk shall keep a separate, permanent file for each limited or full guardianship proceeding and shall file all papers relevant thereto, including petitions, notices, and orders of hearings. Any limited or full guardian duly appointed shall be entitled to receive, without charge, three certified copies of the letters of limited or full guardianship. Certified copies of filed papers shall be otherwise available at a fee per copy to be established by the Court.

**12.04.400 Civil action for reimbursement**

The elder or vulnerable adult, or the Tribe on behalf of the elder or vulnerable adult, may bring a civil action in the Tribal Court against a person whom the Court has determined under this chapter to have exploited an elder’s or vulnerable adult’s resources or monies. Judgments may consist of an order of the Court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party. In a civil action for reimbursement the Tribal Court shall apply (in this order) applicable Tribal law, Federal, or State law.

**Subchapter VI – Appeal**

12.04.410 Appeal

A. Record. For purposes of appeal, a record of the proceedings shall be made available to the elder or vulnerable adult, or his or her guardian. Costs of obtaining this record shall be paid by the party seeking appeal unless waived by the Court.

B. Time Limit. Any party to a proceeding under this code may appeal a final order or disposition of the case by filing a written notice of appeal with the Court within thirty (30) days of the final order or disposition. For the purposes of appeal, any implementation of a non-emergency involuntary protection order, or the denial of the same, shall be considered a final order.

C. Conduct of Proceeding. All appeals shall be conducted in accordance with the Squaxin Island Court procedures ordinance, except as modified in this chapter.

**Subchapter VII – Miscellaneous**

12.04.420 Confidentiality Requirements

Any person who violates the confidentiality requirements of this Chapter is subject to a civil penalty of up to $100 per occurrence, or community service, or both. The Tribal Court will assess the penalty only after petition, notice, opportunity to be heard, and a determination that a violation occurred.

12.04.430 Criminal Prosecution

Any person who commits vulnerable adult abuse, neglect or exploitation may be prosecuted under applicable provisions of the Criminal Code.

12.04.440 Severability

The invalidity of any Section, clause, sentence, or provision of this Chapter shall not affect the validity of part of this Chapter that can be given effect without such invalid part or parts.

12.04.450 Guardians ad litem

If, in its discretion, the Court believes that the appointment of a guardian ad litem will assist the Court or the parties in achieving the purpose of this Title, a guardian ad litem may be appointed by the Court. The guardian ad litem may be any adult deemed appropriate by the Court who does not have an interest in the outcome of the proceeding. The guardian ad litem may conduct such investigation and provide a report to the Court as outlined by the Court. If no tribal funds are available to pay for the appointment of the guardian ad litem, the Court may require a petitioner to pay for the guardian ad litem prior to proceeding with the guardianship proceeding.

12.04.460 Effective Date

This Chapter shall be effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2017.

**12.04.470 Savings Clause**

Each protection order or guardianship order as in effect before \_\_\_\_\_\_\_ 2017, shall remain in effect according to its terms, except to the extent otherwise provided under this chapter or if inconsistent with any provision of this chapter.