01.04.01 Purpose

The purpose of this ordinance is to protect the health and welfare of Tribal citizens, Tribal employees, and Indian children being served by STA by establishing the minimum standards for criminal background checks of all positions within STA.

01.04.02 Authority

This ordinance is enacted under the authority of Article VII, Section (1) (b) and Article VII, Section (1) (n) of the Tribal Constitution and under the authority of the Indian Child Protection and Family Violence Act.

01.04.03 Definitions

(a) A **"crime covered under the Indian Child Protection and Family Violence Prevention Act"** means any crime under Federal, state or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children. In determining whether a crime falls within this category, reference shall be made to the applicable Federal, State, or Tribal law under which the individual was convicted or pleaded guilty or no contest.

(1) **"Crimes of violence"** include crimes that have as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other crime that, by its nature, involves substantial risk that physical force against the person or property of another may be used in the course of committing the crime.

(2) **"Crimes against persons"** include crimes that have as an element the use, attempted use, or threatened use of physical force or other abuse of a person and includes, but is not limited to homicide, assault, kidnapping, false imprisonment, reckless endangerment, robbery, rape, sexual assault, molestation, exploitation, contact, or prostitution, and other sexual offenses.

(3) **"Offenses committed against children"** include any crime committed against a victim that has not attained the age of eighteen (18) years.

(b) **"Crime involving dishonesty or theft"** includes a crime of which an element involves lying, cheating, deception, or fraud or a crime that is substantially similar. A crime involving theft is robbery, burglary, larceny, or forgery or a crime that is substantially similar. In determining whether a crime falls within this category, reference shall be made to the applicable Federal, State, or Tribal law under which the individual was convicted or pleaded guilty or no contest.

(c) **"Crime involving a sexual offense"** means rape, sexual assault, sexual abuse of a minor, incest, online enticement of a minor, unlawful exploitation of a minor, indecent exposure, molestation, exploitation, sexual contact, prostitution, promoting prostitution, and any other sexual offense that is defined by the applicable Federal, State, or Tribal law under which the individual was convicted or pleaded guilty.

(d) **Indian Child Protection and Family Violence Prevention Act of 1990**, codified at 25 U.S.C. §§ 3201-11 (2001).

(e) **"Position" or "Positions"** include all employment positions within or funded by the Sitka Tribe of Alaska, regardless of location of execution or performance of duties. Positions also includes any volunteer or contract positions with STA where the position involves (1) working with children, (2) interacting with the public, or (3) acting as spokesperson for STA, including but not limited to committee or commission chairs or vice chairs authorized to speak on behalf of STA, individuals who travel on behalf of STA, and individuals who volunteer or contract within departments where children are present or children are served as clients.

(f) **"Regular contact with or control over Indian children"** means that as a regular part of an individual's position, as detailed in the individual's job description or contract, the individual will either (1) have contact with Indian children at least once per week, or (2) ever be left alone with Indian children.

(g) **"Violation of a gambling law"** means a crime involving illegal gambling, promoting or profiting from illegal gambling or an illegal gambling enterprise, possessing a gambling record used in illegal gambling or an illegal gambling enterprise, or possession of a gambling device, or a crime that is substantially similar. In determining whether a crime falls within this category, reference shall be made to the applicable Federal, State, or Tribal law under which the individual was convicted or pleaded guilty or no contest.

01.04.04 Policy: Background Screening Required

(a) All Positions: No Convictions of a Crime involving a Sexual Offense

No individual who has been convicted of any crime involving a sexual offense may fill any position within the Tribe.

(b) Positions with regular contact with or control over Indian children

(1) In addition to the screening requirements of 01.04.04(a), no individual may fill a position that involves regular contact with, or control over Indian children, other than temporary non-supervisory positions which are purely funded by enterprise funds, unless the individual has received a favorable suitability determination that the individual meets the minimum standards of conduct set out in 01.04.04(b)(2).

(2) STA's minimum standards of conduct ensure that at a minimum:

(A) The individual has never been convicted of or plead no contest to one felony or two misdemeanors of a crime covered under the Indian Child Protection and Family Violence Act;

(B) The individual's past conduct will not (a) create an immediate or long-term risk for any Indian child or (b) raise questions about the individual's trustworthiness.

(C) The individual is not currently subject to a restraining order issued after a hearing which restrains him or her from harassing, stalking, or threatening an intimate partner or child.

(3) In determining whether the individual meets 01.04.04(b)(2)(B), the following factors may be considered:

(A) Whether the individual has ever been convicted of a drug felony, a crime involving dishonesty, theft or gambling, or another crime which raises a question about an

individual's trustworthiness, or if the individual has a pattern of being charged with crimes of this nature;

(B) Whether the individual has a pattern of being charged with crimes involving a sexual offense, crimes of violence, crimes against a person, or crimes against children.

(C) Whether the individual has made an intentional false statement, deception or fraud on an examination or in obtainment of employment;

(D) Whether the individual has a criminal record indicating that the individual is experiencing alcohol or substance abuse, or is illegally using narcotics, drugs or other controlled substances without evidence of rehabilitation and of a nature and duration that suggests the individual could not perform his or her duties.

(c) **Positions authorized to carry firearms**

No individual shall fill a position requiring or permitting the possession of a firearm if the individual (1) has been convicted, plead no contest to, or has a current pending charge of a felony, (2) has been convicted of or plead no contest to a misdemeanor domestic violence offense, (3) is subject to a court order issued after a hearing which restrains him or her from harassing, stalking, or threatening an intimate partner or child, (4) has been dishonorably discharged from the armed forces, or (5) has a criminal record indicating that the individual is an unlawful user of a controlled substance.

(d) Positions that handle cash

No individual shall fill a position in the Finance Department or STE, or any position which handles cash within any department, if the individual has ever been convicted or plead no contest to two misdemeanors or one felony crime involving theft or dishonesty.

(e) Positions within STA's charitable gaming operation

No individual shall fill a position within STA's Gaming operation if the individual has ever been convicted, plead no contest to, or has a current pending charge of a felony or has ever been convicted of or plead no contest to a crime involving theft or dishonesty or a violation of a gambling law.

01.04.05 Duty to Report: All Positions

All individuals who are in a position of employment, volunteer, or contract, as defined in 01.04.03(e), are required to report any charge or conviction of a violation of a criminal statute, within one working day of the charge or conviction to the individual's immediate supervisor, while the individual is employed, volunteering, or contracting with Sitka Tribe of Alaska. The immediate supervisor must notify the tribal attorney within three working days of the notification, so that the Tribal attorney can determine if the individual continues to be suitable for employment.

01.04.06 Implementing Regulations

The Legislative Affairs Committee is authorized to develop and implement regulations further defining the provisions of this ordinance. Such regulations shall include:

(a) Process for developing and updating a list of positions covered by the various provisions of this ordinance

(b) Requirements for applications for positions

(c) Background investigation procedures
(d) Adjudication procedures
(e) Appeal procedures

01.04.07 Date of Enactment and Amendment

This ordinance was enacted as a policy on May 21, 2003. The first revision of this ordinance was August 17, 2005. Comprehensive revision to the ordinance was made after three readings of the Tribal Council on January 16, 2008. A minor amendment was approved for this ordinance by the Tribal Council at its June 18, 2008 meeting.