

**GENERAL PROVISIONS CORPORATIONS ORDINANCE
KLAMATH TRIBAL CODE
Title 8 Chapter 53**

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53.01 Short Title.

This Ordinance shall be known and may be cited as the General Provisions Corporations Ordinance.

53.02 Scope.

The provisions of this Ordinance shall apply to all corporations authorized herein and formed under the laws and sovereign power of the Tribe, whether before or after the enactment hereof and more specifically prescribed in Title 8 Chapters 53,56, 57. The Tribal Planning Department and Commerce position established herein shall have such authority as prescribed individually and collectively in said Ordinances.

53.03 Purpose and Construction.

(a) The purposes of this Ordinance are:

- (1) to encourage commerce by providing limitations on the liability of participants in incorporated enterprises;
- (2) to reform the laws of business corporations by allowing greater flexibility in the organization and operation of close corporations;
- (3) to ensure that corporate assets are available for the satisfaction of valid claims of corporate creditors; and
- (4) to simplify, clarify and modernize the laws applicable to businesses created under the sovereign powers of the Tribes.

(b) The provisions of this Ordinance shall be liberally construed and applied to promote its underlying purposes and policies.

53.04 Definitions.

In the Chapters of this Ordinance:

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- (a) "Articles" means the articles of incorporation, charter or other documents evidencing the creation of a corporate entity pursuant to sovereign powers.
- (b) "Close Corporation" means a corporation, the shares of which are not publicly traded and are subject to restrictions on transfer.
- (c) "Comprehensive Business Codes means the business codes set forth in Title 8, Chapters 53, 56,57.
- (d) "Controlled," as used in reference to corporations controlled by the General Council or the Tribal Council, includes any corporation where the majority of its Board of Directors are chosen or approved by the General Council or the Tribal Council, as-well as entities of the Tribes without boards of directors.
- (e) "Deliver" means hand delivery, delivery by United States mail and commercial carrier with postage prepaid.
- (f) "Distribution" means the direct or indirect transfer of money or other property (with the exception of the corporation's own shares) by a corporation or the incurrance of indebtedness by a corporation to, or for, the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; or otherwise.
- (g) "For-Profit Corporation" means a corporation of which the income is distributable for the benefit of its shareholders, and whose assets, upon dissolution, are distributable to its shareholders.
- (h) "Individual" means a natural person and the estate of an incompetent or deceased individual.
- (i) "Interrogatories" mean formal written questions seeking information in the form of a written response.
- (j) "Non-Profit Corporation" means one in which no part of the income of the corporation is distributable to any person by reason of that person's status as a member, director, officer or employee, except for reasonable wages or benefits for work or services performed.

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- (k) "Notice" means written notice unless oral notice is reasonable under the circumstances.
- (l) "Quorum" means the number of members of a board or other body which must be present in order to make the board or other body competent to transact business in the absence of the other members.
- (m) "Regulated Corporations" means only corporate entities formed pursuant to title 8 of the Klamath Tribal Code, which are not exempt from regulation of the Manager of Commerce pursuant to § 53.05(c) of this Ordinance. Evidence that an entity was formed by the General Council or the Tribal Council pursuant to legal authority other than that set forth in title 8 shall be conclusive evidence that the entity is not a Regulated Corporation.
- (n) "Reservation" means the reservation of the Klamath Tribes as well as any lands held in trust for the Klamath Tribes by the United States and any lands deemed to be the "Indian country" of the Klamath Tribes as that term is used in 18 U.S.C. § 1151.
- (o) "Shares" mean the units into which the proprietary interests in a for-profit corporation are divided.
- (p) "Shareholder" means the person in whose name shares are registered in the records of the corporation.
- (q) "Subscriber" means a person who subscribes for shares in a corporation, whether

53.05 Tribal Department of Commerce will be under the supervision of the Director of Planning and Enterprise as listed on the Klamath Tribes Organizational chart. The before or after incorporation position for the Commerce Manager will be housed in the Klamath Tribes Planning Department.

- (a) The Tribal Department of Commerce is hereby established and shall oversee implementation of the Tribal Comprehensive Business Codes. All actions of the Department of Commerce shall be subject to review by the Klamath Tribes Planning Department Director and Tribal Council.
- (b) The Manager of Commerce shall oversee the operations of the Department of Commerce and shall, at the sole and absolute discretion of the Director/Manager of Commerce, have authority to perform functions that are necessary and proper in order to administer and enforce the provisions of this Ordinance under the direct

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supervision of the Planning Department Director, including but not limited to the power:

- (1) To review applications for incorporation and grant certificates of incorporation under Title 8, chapter 56 and 57;
 - (2) To review amended articles of incorporation and issue certificates of amendment;
 - (3) To review proposed articles of dissolution and to dissolve corporations administratively;
 - (4) To accept for filing such other notices, reports and other documents from corporations for the purpose of making such documents available to the public upon request;
 - (5) To furnish, on request, copies of articles of incorporation, notices, reports and other documents to the public upon the payment of reasonable fees;
 - (6) To issue interrogatories and demands for inspection or production of documents to corporations in accordance with the provisions of this Ordinance;
 - (7) To supervise the orderly dissolution of corporations formed under tribal law;
 - (8) To bring actions or participate in actions in Tribal Court or any other court of competent jurisdiction for the enforcement of any of the provisions of the Tribal Comprehensive Business Codes;
 - (9) To promulgate regulations pursuant to this Ordinance, formulate recommendations to submit to the Council for revisions of or amendments to the Comprehensive Business Codes, and take other actions necessary for the administration of the provisions of the Comprehensive Business Codes;
 - (10) Upon approval by the Tribal Council, to enter into agreements or contracts with Indian tribes, businesses, and other parties to implement the Tribal Comprehensive Business Codes.
- (c) The authority of the Manager of Commerce shall be limited to the regulation of Regulated Corporations, as defined in this Ordinance, and the Manager of Commerce shall not have authority to regulate corporations which are not established pursuant to title 8 of the Klamath Tribal Code or those corporations which are formed under either title 8 and satisfy one of following criteria:
- (1) for-profit entities which are established pursuant to title 8, chapter 56 of the

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Klamath Tribal Code and are owned, in whole or in part, directly by the Tribes;

- (2) nonprofit entities which are established pursuant to title 8, chapter 57 of the Klamath Tribal Code and are controlled by the General Council or Tribal Council;

53.06 Status of Corporations.

- (a) For the sole purposes of taxation, regulatory jurisdiction and civil jurisdiction, the following Regulated Corporate entities shall be entitled to all of the privileges and immunities of members of federally-recognized Indian tribes:
 - (1) All for-profit corporations formed pursuant to title 8, chapter 56 of the Klamath Tribal Code, which are managed by members of federally recognized Indian tribes and which are at least 51% owned by Indians who are members of federally-recognized tribes.
 - (2) All non-profit corporations formed pursuant to title 8, chapter 57 of the Klamath Tribal Code, which are managed by members of federally recognized Indian tribes and which have as their primary purpose benefitting the people of the Reservation or any group of people which comprises primarily members of federally-recognized Indian tribes.
- (b) In the case of any corporation having its principal place of business on the Reservation, which has been incorporated under the laws of any state and also pursuant to the sovereign powers of the Tribes, the ordinances and resolutions of the Tribal Council, the Constitution of the Tribes and the tribal charter documents shall take precedence over any conflicting state laws or charter documents in any dispute concerning the status of the corporation or the rights and obligations of any persons with respect to the corporation.
- (c) The Klamath Tribal Court shall have jurisdiction to decide all questions with respect to the status of Regulated Corporations as defined in this Ordinance.

53.07 Reporting Requirements.

The Manager of Commerce may propound to any Regulated Corporation, subject to the provisions of the Tribal Comprehensive Business Codes, such interrogatories or demands to inspect documents as may be reasonably necessary or proper to enable the Director to ascertain whether such corporation is complying with all of the provisions of the Codes. Such interrogatories or demands for inspection shall be answered within 30 days after the mailing thereof. An interrogatory will be considered to have been answered for the purposes of this section if the response is provided in writing to the

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Director, provides a full and complete answer to the questions propounded, and is signed under oath (as verified by a notary public or officer of the Klamath Tribal Court) by a duly authorized officer of the Corporation.

53.08 Jurisdiction of Klamath Tribal Court.

- (a) To the maximum extent consistent with due process of law, all Regulated Corporations and all directors, officers and shareholders of such corporations shall be subject to the jurisdiction of the Klamath Tribal Court in all actions which arise out of the acts, omissions or participation of such persons in connection with the affairs of such corporations; provided, however that this section shall not apply to corporations which are owned in whole or in part by the Tribe or which are controlled by the Tribal Council, or to the directors or officers of such corporations.
- (b) This section shall not be construed as a waiver of the sovereign immunity of the Klamath Tribes, or any corporation or entity, which is not a Regulated Corporation, or which is exempt from the regulation of the Department of Commerce pursuant to paragraph (c) of §53.05 above, and their officers, employees, or agents..

53.09 Registered Agent.

All Regulated Corporations shall appoint a person to accept the service of judicial process on the corporation. All corporations shall notify the Manager of Commerce of any change in the name or address of the corporation's registered agent. All Regulated Corporations, are hereby deemed to consent to the appointment of the Manager of Commerce as their agent for the acceptance of service of process pursuant to an action properly filed in the Klamath Tribal Court in the event the corporation shall have failed to notify the Manager of Commerce of any change in the name or the address of its registered agent. In such cases, service upon the Manager of Commerce shall be deemed to be service on such corporation within 10 days thereof, provided, the Manager of Commerce shall mail notice of such service to any incorporator, director, officer or shareholder of the corporation at the most recent address noted in the files of the Manager of Commerce.

53.10 Liability of Shareholders or Members.

No shareholder or member of any corporation formed pursuant to the sovereign powers of the Tribes, including those formed pursuant to Titles 8, 56 and 57 of the Tribal Comprehensive Business Code, shall be liable to any creditor of the corporation by

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reason of his or her status as a shareholder or member, except insofar as said shareholder or member may be indebted to the corporation for unpaid loans or indebtedness for the purchase of shares.

53.11 Corporate Name.

- (a) The name of any for-profit corporation shall contain the words, "Corporation", "Incorporated", or "Limited", or shall contain an abbreviation of one of such words.
- (b) The name of any non-profit corporation may contain the words "Incorporated", "Corporation", "Limited", "Association", "Fund", "Society", "Club", "Foundation", or "A Non-profit Corporation."
- (c) No corporation formed under Titles 56 and 57 shall use any corporate name which is the same-as, or deceptively similar to, any other Regulated Corporation or any other corporation formed pursuant to the sovereign powers of the Tribes.
- (d) No corporation which is privately owned or controlled shall use any name or make any representation which implies that it is a subdivision or enterprise of the Tribes.

53.12 Fees.

The Manager of Commerce shall charge:

- (a) for filing an application for incorporation and proposed articles of incorporation, \$50.00;
- (b) filing an application for an amendment to the articles of incorporation, \$25.00;
- (c) filing a statement of change of name or address of registered agent, \$10.00;
- (d) filing any other statement or report of a corporation, \$10.00;
- (e) for furnishing a certified copy of any document, instrument report or other paper relating to a corporation, \$5.00;
- (f) for furnishing a certificate as to the status of a corporation or as to the existence or non-existence of facts relating to corporations, \$25.00; and
- (g) for copies to any person or group that exceed 25 pages in length, a charge of \$.10 per page

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53.13 Severability.

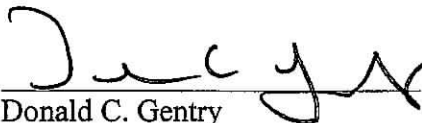
If any provisions of this Ordinance or the application of any provision to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of this Ordinance and its application to any other person or circumstances and, to this end, the provisions of this Ordinance are severable.

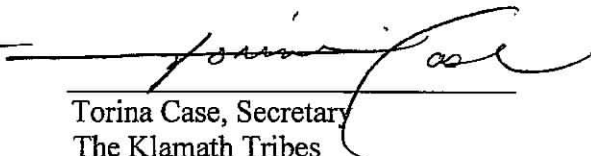
53.14 Sovereign Immunity.

Except as expressly and specifically waived by a resolution of the Klamath Tribes or by Klamath Tribal Law, the Klamath Tribes shall be immune from suit, and their officers and employees also shall be immune from suit for liability arising from the performance of their official duties. Nothing in this Ordinance shall waive, or be interpreted as waiving, the sovereign immunity of the Klamath Tribes, the Tribes' officers, employees, or agents.

Certification

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that at a regularly scheduled General Council meeting held on the 17th day of November, 2012, the General Council adopted this Ordinance to be effective as of November 17, 2012, by a vote of 42 for, 0 opposed, and 1 abstentions. Quorum = 52


Donald C. Gentry
The Klamath Tribes


Torina Case, Secretary
The Klamath Tribes

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