

GOVERNMENT CORPORATION ORDINANCE
KLAMATH TRIBAL CODE
Title 1 Chapter 6

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KLAMATH TRIBAL GOVERNMENTAL CORPORATIONS ORDINANCE

TRIBAL LAW 97-3

(To be codified in Title __, Chapter __ of the Klamath Tribal Code)

Section 1. Authority and Purpose - Corporations Authorized

This Ordinance shall be known as the Klamath Tribal Governmental Corporations Ordinance. There are hereby authorized to be created by duly adopted resolutions of the Executive Committee of The Klamath Tribes of the Klamath Tribes Indian Reservation, corporations which will be agencies and instrumentalities of the Klamath Tribal Government. The corporations organized and created under this Ordinance shall be subject to this Ordinance, other Tribal law and such other laws as are applicable. The right to repeal, alter or amend this Ordinance at any time is expressly reserved to the Klamath Tribal Executive Committee. No corporation shall be created except upon duly adopted Executive Committee resolution including approval of the entity's charter and articles of incorporation. No provision of any charter and/or articles of incorporation shall violate the provisions of this Ordinance. Provided, however, that this Ordinance provides only minimum requirements pertaining to the creation of governmental corporations and other conditions or requirements may be imposed upon corporations by other applicable law, charter and articles of incorporation.

Section 2. Purpose and Authority

- A. Indian tribes have been consistently recognized throughout the history of the United States of America to retain governmental powers which include, where consistent with the trusteeship of the United States, all powers necessary to commercially utilize their undivided resources for the economic benefit of the Tribes and to organize corporations for those and other purposes. This Ordinance is intended to exercise and

implement Tribal governmental, corporate, economic, and commercial powers, which are hereby declared by the Tribes to be of the same nature as all other Tribal powers, pursuant to the Constitution of the Tribes.

- B. The Constitution of the Tribes provides for the exercise of governmental powers and authorities over tribal assets of the Klamath Tribes and expressly recognizes the Klamath Tribes' ability to engage in other economic activities and further provides for the delegation of certain of its authorities and powers to the Klamath Tribal Executive Committee. These powers are to be exercised to further the economic and other advancement of the Klamath, Modoc and Yahooskin people.
- C. The Tribes and their members have endured a century of economic deprivation and oppression. This fact has been recognized by the Congress of the United States through numerous Acts intended to assist in the development of Indian resources. There is now a need and an opportunity to develop Klamath natural and human resources to provide a standard of living and education to all Tribal members equal to that of all citizens of the United States. The Tribes adopt this Ordinance in order to meet the following independent goals: (1) carry out a constitutional mandate; (2) develop and manufacture Tribal natural resources to obtain the highest value possible for those resources; (3) raise the standard of living and education for all Tribal members; (4) enter into and take advantage of governmental, business and commercial opportunities available to the Tribes.
- D. This Ordinance is designed to accomplish the goals set out in "C" above, by furthering the development of all the Tribal resources, which include, but are not limited to:
- (1) The Tribal labor force on or near the Klamath Tribes Service Area and Reservation;
 - (2) Timber;
 - (3) Minerals, oil and gas;
 - (4) Waters;
 - (5) Lands;

- (6) Fish and wildlife;
 - (7) Agricultural products and livestock;
 - (8) Electric power.
- E. The Tribes find that to accomplish the goals set out in "C" and "D", above, and for purposes of efficiency and wise stewardship, it is necessary for the management of the economic development of Tribal resources to be separated from other governmental functions of the Tribes and placed within the immediate responsibility of entities other than the Executive Committee, so that commercial development may take place within, and be based upon, the sphere of the economic marketplace rather than within the sphere of Tribal political concerns.
- F. The Tribes have, for many years, operated governmental programs to protect the economic and social welfare of Tribal members and to protect the health and security of all persons on and near the Service Area and Reservation. To support these programs, the Tribes have historically depended upon, among other things, surplus revenues from the sale and utilization of Tribal natural resources. It is intended that the corporations created under this Ordinance will increase the revenues to the Tribes from the sale and utilization of Tribal natural and other resources by adding value to those resources, manufacturing, processing, service industry activities, and by other means. Such surplus and additional revenues may be used to fund governmental programs and for the protection and security of Tribal members and residents of the Service Area and Reservation.

Section 3. Definitions.

A. For purposes of this Ordinance and for corporations charters and articles of incorporation hereunder, the following words shall have the definitions attached to them herein unless a different meaning clearly appears from the context:

1. "By-laws" means those rules adopted by a body for its internal governance. By-laws cannot create any new powers in a corporation and are invalid to the extent that they may conflict with tribal law or the corporate charter and/or articles of incorporation.

2. "General Council Member" means any enrolled member of the Klamath Tribes who is 18 years of age or older.
3. "Klamath Tribes" or "Tribes" means the sovereign Indian nation comprised of the Klamath Tribe, the Modoc Tribe, and the Yahooskin Band of Snake Indians.
4. "Executive Committee" or "Tribal Council" means the representative elected body of the Klamath Tribes General Council. The Executive Committee is comprised of the Tribal Chairperson, Tribal Vice-Chairperson, Tribal Secretary, Tribal Treasurer, and six (6) at large members or such equivalent body as may exist in the future.
5. "Charter" means the instrument from the Klamath Tribes granting certain powers, assurances, or rights to the corporate entity.
6. "Articles of Incorporation" mean that document (which will generally include the Charter) filed with the Klamath Tribes Executive Committee upon the incorporation of a tribal governmental corporation.
7. "Must" or "shall" means an action which is mandatory or required.
8. "Should" means that the activity or duty is strongly recommended but is not absolutely required.
9. "Default" means to violate the requirements, terms or conditions of laws applicable to the corporation, its charter and/or articles of incorporation, or approved by-laws.

Section 4. Privileges and Immunities.

The corporations established under this Ordinance shall be considered to be governmental agencies and instrumentalities of the Tribes and their officers and employees shall be considered officers and employees of Tribal entities notwithstanding the fact that their work rules and conditions may differ from those other Tribal employees. These persons shall carry out responsibilities in accordance with the Constitution and other laws of the Klamath Tribes. Such corporations, their officers and employees shall, therefore, be entitled to all of the privileges and immunities enjoyed by the Tribes including, but not limited to, immunities from suit in Tribal, federal and state courts, and federal and state taxation, or regulation, except as specifically set out in this Ordinance and in corporate charter and articles of incorporations granted pursuant to this Ordinance. Except as may be clearly and expressly

provided for by federal or tribal law, tribal corporations shall not be considered to be like non-tribal corporations for liability or federal requirements purposes, including provisions which refer generically to "corporations." Provided further, that any employee of the tribes or a tribal corporation shall be conclusively deemed to have knowingly and voluntarily subjected themselves to the rules and laws of the Klamath Tribes and such tribunals and courts as currently exist or may hereafter be created.

Section 5. Tribal taxation.

All activities of corporations created under this Ordinance shall be subject to taxation by the Tribes.

Section 6. Ownership.

Every corporation created pursuant to this Ordinance shall have at all times one hundred percent (100%) of its stock owned by the, except that by express and separate authorization of no less than seven-tenths (7/10) of the Executive Committee, a provision may be included in a corporation's charter and articles of incorporation to provide that the Tribes need retain only a percentage certain of between 51% and 100% of the corporate stock.

Section 7. Subsidiary corporation.

By express provisions in a corporate charter and articles of incorporation, the Tribes may allow a corporation to establish one or more subsidiary corporations which shall also be created pursuant to this Ordinance. Provided, however, that the parent corporation shall retain one hundred percent (100%) of all of such subsidiary corporation's stock except that by express and separate authorization of not less than seven-tenths (7/10) of the Executive Committee, a provision may be included in a subsidiary corporation's charter and articles of incorporation to provide that the parent corporation need retain only a percentage certain of between 51% and 100% of the corporate stock. Except as may be otherwise limited, any subsidiary corporation and its officers and employees have all the same powers, privileges and immunities, as those of any other corporation established pursuant to this Ordinance.

Section 8. Voting Stock - Alienation.

No voting stock in any corporation created pursuant to this Ordinance and owned by a corporation or the Tribes may be alienated without separate express written approval by at least seven tenths (7/10) the Executive Committee.

Section 9. Organization.

The Executive Committee may, by resolution, appoint the initial incorporating directors of corporations, including subsidiary corporations, created pursuant to this Ordinance. The election or appointment of subsequent officers and directors shall be governed by the provisions of the charter and articles of incorporation.

Section 10. Powers, Duration.

The powers of corporations created pursuant to this Ordinance shall be set out in the charter and articles of incorporation and may include all standard powers of commercial corporations and the sovereign power of eminent domain. The duration of corporations created under this Ordinance shall be perpetual unless a different duration is stated in the charter and articles of incorporation.

Section 11. Lands.

Real property acquired by a corporation created pursuant to this Ordinance may be transferred, where permitted by the federal law, to the ownership of the United States in trust for the Tribes and thereafter made subject to the control of the corporation by the Tribes.

Section 12. Tribal Courts - Jurisdiction, Enforcement of Ordinance.

Notwithstanding the immunity from suit conveyed upon and inherent to the corporations created pursuant to this Ordinance, the provisions of this Ordinance, Tribal regulatory acts, and Tribal actions taken pursuant to this Ordinance may be enforced against any corporation created under this Ordinance, parent or subsidiary, and/or its directors or officers by an action in law or equity in the appropriate courts and tribunals of the Klamath Tribes, when brought by the Executive Committee or by the Board of Director of a parent corporation to enforce the provisions of this Ordinance or the corporate charter and articles of incorporation. The Executive Committee, acting as the legislative body of the Tribes, may further waive the

sovereign immunity of a corporation, subsidiary or otherwise, by legislative action, express provision in the charter and articles of incorporation, or by other retained or granted authority.

Section 13. Agents.

All corporations created under this Ordinance shall publicly designate and maintain a registered agent for service of documents on the Klamath Tribes Indian Reservation.

Section 14. Assets.

The assets of each and every corporation created under this Ordinance when specifically granted to the corporation by the Tribes, or when obtained through a standard acquisition by the corporation, shall be separate and distinct from those of the Tribes. In no case shall Tribal assets which have not been specifically, and in express written form, pledged or assigned to a corporation be available for use or contribution toward the satisfaction of any debt or obligation of a corporation. ¶ Provided, however, that the Executive Committee may otherwise assist a corporation to meet its debts or obligations in an otherwise lawful manner.

The Tribes may transfer assets or its interest in assets to tribal corporations. Provided that, except where clearly expressed to the contrary, assets transferred from the Tribes to the tribal corporation shall be subject to such incumbrance as may exist upon or be related to the transferred assets.

Section 15. Audits.

The governing body of every corporation incorporated under this Ordinance shall require that an outside auditor conduct an annual audit of the corporation's books and records within 120 days or within such other time as may be required by the corporations charter and articles of incorporation. Such audit shall be completed by a certified public accounting firm, licensed in the State of Oregon and prepared in accordance with generally accepted auditing standards. The results shall be made available to the Executive Committee - acting as the shareholder Tribes voting shareholders - within a reasonable period of time after completion. The Executive Committee, by duly adopted resolution, may require that any corporation created under this Ordinance be audited by an independent auditor hired by the Executive Committee

or the Board. The Executive Committee shall further have access to all Corporate documents necessary for such an audit or other investigation taken in good faith.

Section 16. Annual Meetings, Reports.

All Corporations, unless expressly excused from some or all requirement of this provision by written notice, shall pay and discharge all costs consistent with budgets approved by the Executive Committee and issue detailed written monthly financial reports. The Corporation shall prepare, in accordance with generally accepted accounting principals, detailed written monthly financial reports. The monthly reports shall contain, at a minimum, gross revenue, assessable gross revenue, net revenue, cash flow, debt service and such other information as is requested from the immediate preceding month. In addition, the Corporation shall prepare and issue quarterly and annual Reports to the Klamath Tribes Executive Committee, and make such other reports, in such form and at such times as the Executive Committee, or their designee may reasonably request. Management shall also file a full report of the financial and production activities of the corporation with the Executive Committee on an annual basis and at such other times as the corporations' charter and articles of incorporation may require.

Section 17. Contracts with Officers.

Except as provided expressly in this section and notwithstanding any other provision of this Ordinance and charter and articles of incorporation granted pursuant to provisions of this Ordinance, all directors or officers of any governmental corporation incorporated under this Ordinance, and any firm in which said directors or officers hold office, or are shareholders or owners, shall be disqualified from dealing or contracting with Tribal governmental corporations incorporated under this Ordinance, or subsidiaries thereof, as either a vendor, purchaser, or otherwise. Such contracts or transactions shall be void. Provided, however, that such contracts or transactions may be allowed where the relationships and all relevant provisions have been fully disclosed to, and approved by, the Klamath Tribal Executive Committee. To be effective, any such approval must be evidenced by written resolution. Provided further, however, that this section shall not exclude a person from being employed in a full-time position for tribal government or for a governmental corporation or subsidiary thereof and also sitting on a corporation's board of directors.

Section 18. Bonding.

Notwithstanding any other provision of this Ordinance, or charter and articles of incorporation (and supplementing bylaws) granted pursuant to provisions of this Ordinance, all directors, officers, contractors and employees of any governmental corporation incorporated under this Ordinance who are:

- (1) authorized, either individually or in conjunction with others, to expend funds on behalf of the governmental corporation or any of its subsidiaries or agencies, or (2) are responsible for accounting for the funds of a governmental corporation or any of its subsidiaries or agencies,

shall at all times be bonded or insured by the corporation to protect the assets of the corporation in an amount consistent with the financial responsibilities of the director, officer, contractor or employee. Such bonds or policies of insurance shall be obtained at the expense of the governmental corporation or the contractor and must be approved by the Executive Committee before the director, officer, contractor or employee is permitted to expend or account for funds.

No director, officer, contractor, or employee of a governmental corporation shall have authority under this Ordinance, or charter and articles granted under this Ordinance, to expend or account for corporate funds unless bonded or insured in compliance with this section. Any signature of a corporate director, officer, contractor or employee purporting to authorize expenditure of corporate funds shall be void if at the time the signature is given the director, officer, contractor, or employee is not bonded or insured as required by this section.

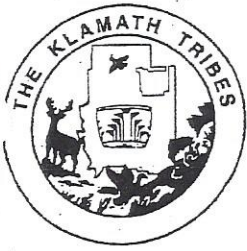
Section 19. Location.

The principal and registered offices of every corporation authorized or created under this Ordinance shall be located within the Klamath Tribes Indian Reservation. The principal and registered offices may, but need not be, identical.

Section 20. Severance Clause

Any provision or portion of this Ordinance which is found to be unlawful or otherwise

contrary to superseding law shall affect that portion only and shall not affect the validity of the Ordinance as a whole.



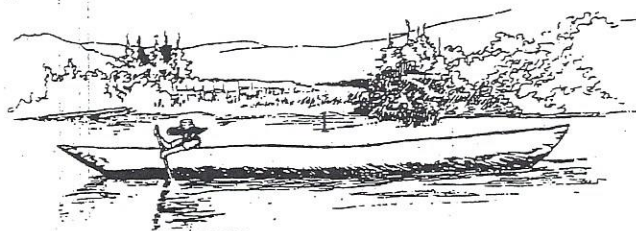
The Klamath Tribes

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RESOLUTION NO. 97-75

KLAMATH TRIBAL EXECUTIVE COMMITTEE RESOLUTION ENACTING THE KLAMATH TRIBAL GOVERNMENTAL CORPORATIONS ORDINANCE

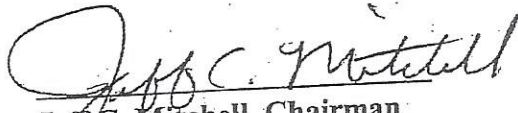
- WHEREAS,** The Klamath and Modoc Tribes and Yahooskin Band of Snake Indians signed the Treaty of 1864 establishing the Klamath Reservation; and
- WHEREAS,** The General Council of the Klamath membership is the Governing body of the Klamath Tribes, by the authority of the Constitution and By-Laws of the Klamath Tribes (Article VI) as approved and or adopted by the General Council, most recently duly amended on August 17, 1996; and
- WHEREAS,** The Klamath Indian Tribe Restoration Act of August 27, 1986 (P.L. 86-398) restored federal recognition of the Sovereign Government of the Klamath Tribes Constitution and By-Laws; and
- WHEREAS,** The Klamath Tribal Executive Committee is the elected governmental body of the Klamath Tribes and has been delegated the authority to "direct the day-to-day business and governmental affairs of the Klamath Tribes under the general guidance of the General Council" (Constitution, Article VI; Executive Committee By-laws, Article I); and
- WHEREAS,** The Tribal Executive Committee has been presented with drafts of the proposed Klamath Tribal Governmental Corporations Ordinance at earlier meetings and has reviewed and commented upon the same over an extended period of time; and
- WHEREAS,** The Tribal Executive Committee reviewed and considered the proposed Klamath Tribal Governmental Corporations Ordinance in its current form and believes it to be in proper order and a beneficial law for the Klamath Tribes to enact.




NOW THEREFORE BE IT RESOLVED, that the Executive Committee hereby adopts this resolution and enacts the Klamath Tribal Governmental Corporations ordinance as approved by the Executive Committee on this date.

CERTIFICATION

We, the undersigned, as Chairman and Secretary of the Klamath Tribes, do hereby certify that at a regularly scheduled Executive Committee meeting held on the 14th day of Oct, 1997, where a quorum was present, the Executive Committee duly adopted this Resolution by a vote of 6 for and 0 opposed, 0 abstaining.


Jeff C. Mitchell, Chairman
The Klamath Tribes


Barbara J. Kirk, Secretary
The Klamath Tribes