

BISHOP PAIUTE TRIBE
TITLE 13 – BUSINESS
CHAPTER 13.1 – SMALL CLAIMS CODE
ENACTED BY TRIBAL COUNCIL: DECEMBER 20, 2012
Amended by Tribal Council X, 2021

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Section 1. ~~Tribal Council~~ Findings

The Bishop Tribal Council (Tribal Council), the federally recognized governing body for the Bishop Paiute Tribe (Tribe), after careful review of the needs of Tribal government, individuals and businesses as it relates to access to the legal process to resolve claims for money, the Tribal Council finds and declares as follows:

- A. Individual civil money disputes are of special importance to Tribal Members and businesses and of significant social and economic consequence collectively; ~~and:~~
- B. In order to resolve civil money disputes expeditiously, inexpensively, and fairly, it is essential to provide a judicial forum accessible to all parties directly involved in solving these disputes.

Section 2. ~~Declarations of Policy~~

The hearing and disposition of the Small Claims actions under this ~~Ordinance Code~~ shall be informal, the object being to dispense justice promptly, fairly, and inexpensively.

Section 3. ~~Authority and Jurisdiction~~

~~A. Small Claims Court~~

~~Once this Code is adopted by the Bishop Paiute Tribal Council, it shall be~~ ~~This Ordinance shall be a part of and be~~ within the jurisdiction of the Bishop Paiute Tribal Court system (Tribal Court) and unless otherwise stated in this ~~Ordinance Code~~ shall be subject to the Tribal Court Rules presently in existence

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and hereafter amended. The judge of the Tribal Court shall hear all ~~claims-complaints~~ under this ~~Ordinance Code~~ and render judgment according to the facts presented and the applicable law, custom or practice.

Section 4. Jurisdiction

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~~A. The jurisdiction of the Tribal Court under this Code is limited to civil disputes for the recovery of money only, not to exceed \$7,000.00.~~

~~B. The jurisdiction of the Tribal Court under this Code does not extend to personal injury, or property damage, commercial and business claims. (except for Tribal government claims for property damage) actions, child support or alimony claims no matter what the amount of the claim.~~

~~C. The jurisdiction of the Tribal Court under this Code does not extend to child support or alimony (spousal support).~~

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~~C. Money judgments must be of a commercial, business or tribal governmental nature.~~

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~~1. Commercial and business claims could include, but are not be limited to past due rent; services rendered and not paid for; loans of money made and not repaid; goods sold and not paid for.~~

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~~2. Tribal governmental claims could include, but are not be limited to past due rents and/or property damage to Tribal housing units.~~

Section 4.

Filing Complaints and Time Limitation

Tribal members (or entities) may file ~~claims-complaints~~ against Tribal members (or entities). Tribal members may also file ~~claimcomplaints~~ against nontribal member Indians (or entities) living on the Reservation. Nontribal member Indians living on the Reservation may sue Tribal members. Tribal members may file ~~claimcomplaints~~ against non-Indians who are residing on the Reservation and who have consented to the Tribal Court's jurisdiction.

~~A. The Small Claims Court jurisdiction does not extend to personal injury or property damage (except for Tribal government claims for property damage) actions, child support or alimony claims no matter what the amount of the claim.~~

~~B. Money judgments must be of a commercial, business or tribal governmental nature. The commercial and business claims could include, but not be limited to past due rent; services rendered and not paid for; loans of money made and not repaid; goods sold and not paid for.~~

~~Tribal governmental claims could include, but not be limited to past due rents and or property damage to Tribal housing units;~~

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~~C. All ~~claimcomplaints~~ for personal injury and/or property damage must be filed with the Tribal Court within one (1) year from the date of the incident giving rise to the complaint. All commercial and business ~~complaints~~ must be filed with the Tribal Court within three (3) years of the ~~claimcomplaint~~ coming due.~~

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Section 5. ~~Service of Claim and Response~~Small Claims Complaint, Answer, and Counterclaim

~~A. Service of the complaint shall be by personal service, as described in the Bishop Paiute Tribe Rules of Court. If the plaintiff is unable to personally serve the defendant(s), upon filing a declaration of due diligence and approval by the Tribal Court, the plaintiff may serve the defendant(s) by substituted or alternative service~~

as directed by the Tribal Court, in accordance with the Bishop Paiute Tribe Rules of Court. In either case, proof of service must be filed with the Court.

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B. Except as provided in subsection (C) below, the defendant's answer may be served by personal service, or by mailing (first class mail, postage prepaid) to the plaintiff at his/her address as shown on the complaint.

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C. If the defendant's answer includes a "counterclaim," service of the answer and counterclaim shall be by personal service. If the defendant(s) is/are unable to personally serve the plaintiff, upon filing a declaration of due diligence and approval by the Tribal Court, the defendant(s) may serve the plaintiff by substituted or alternative service as directed by the Tribal Court.

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A. Personal Service: Personal service of any court document is accomplished by delivery of a copy of the document to the named individual/person or entity subject to service at any place he/she/it may be found by any person age 18 or over who is not a party to the proceeding.

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B. Substituted Service: In the event that personal service is not completed, substituted service may be completed by leaving copies of the documents at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing by first class mail, postage prepaid, copies to the person served at the place where the copies were left.

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Section 6. Counterclaims

A. The defendant may file a counterclaim against the plaintiff in the same action in an amount not to exceed the jurisdictional limits of this Ordinance Code (\$7,000.00). The claim-counterclaim need not relate to the same subject or event as the plaintiffs claim-complaint.

B. The defendant's claim-counterclaim shall be filed and served in the same manner provided for filing and service of the claim-complaint of plaintiff.

C. The defendant shall cause a copy of the counterclaim and order for appearance to be served on the plaintiff at least five (5) days before the hearing date.

D. Notwithstanding any provision of this OrdinanceCode, no counter-claim may be filed against the Tribe or any of its officials or employees. Section 154 is incorporated herein and shall govern all counterclaim issues.

Section 7. Filing Fee - Waiver

Any party, either plaintiff or defendant, who chooses to invoke the powers of the court or to defend any cause shall pay a filing fee unless the court waives the filing fee for good cause shown. The Court shall maintain a separate Filing Fee Schedule that shall be posted in the Court and that shall remain in effect until amended by the Tribal Council.

A person who can demonstrate indigency or other good cause may apply for a waiver of required filing fees. A waiver shall be granted by Order of the Court in writing and shall be filed in the case file.

Section 8. Hearings

The hearing of all claim/complaints and counterclaims and the disposition thereof shall be informal, the object being to dispense justice promptly, fairly, and inexpensively.

Section 9. Evidence; Witnesses

A. The parties have the right to offer evidence by witnesses at the hearing or, with the permission of the court, at another time.

B. If the defendant fails to appear, the court shall still require the plaintiff to present evidence to prove his or her claim/complaint.

C. The court may consult witnesses informally and otherwise investigate the controversy with or without notice to the parties.

Section 10. Appearance by Attorneys

A. No attorney shall take part in the conduct or defense of a small claims action unless the attorney is a party to the action or the claim/complaint is against a partnership in which he or she is a general partner and in which all the partners are attorneys.

B. Nothing in this section shall prevent an attorney from providing advice to a party to a small claims action, either before or after the commencement of the action; testifying to facts of which he or she has personal knowledge and about which he or she is competent to testify; or representing a party in an appeal of a small claims judgment; or representing a party in connection with the enforcement of a judgment.

C. A non-attorney advocate or family member or friend may assist the party.

Section 11. Judgment-Dismissal

After hearing on the claim/complaint/counterclaim the Tribal Court shall either dismiss the claim/complaint/counterclaim in writing or issue a judgment in writing setting out clearly its findings. The dismissal/judgment shall be served on all parties by certified mail or personal service.

Section 12. Enforcement of Judgments

The Tribal Court has, in addition to any other available remedies, a further grant of authority to order one or more of the following remedies within its discretion in order to obtain compliance with its orders/judgments:

A. Order the suspension of selective Tribal services identified and limited to DMV exemptions, enrollment card verification, and sales tax certification within the discretion of the Tribal Court.

B. Order the suspension of eligibility to receive Tribal per capita and State of California Special Distributions, or in the alternative, the use of such Tribal per capita and state distributions to satisfy any and all outstanding orders/judgments of the Tribal Court.

C. Issue a wage/garnishment/withholding order.

Section 13. Right of Appeal

The Bishop Paiute Tribal Appellate Court shall hear all appeals from the Tribal Court related to this Code pursuant to adopted Appellate Court rules. All decisions of the Appellate Court shall be set forth in a written

opinion, and the decision of the Appellate Court shall be final. A party may have an attorney representative for all appeals from the Tribal Court.

Section 14. Sovereign Immunity

Nothing in this ordinance is a waiver of the sovereign immunity of the Tribe or the Tribal Council or any official, agent or employee of the Tribe while acting in his or her official capacity. The employees and appointees of the Tribe, the members of the Tribal Council, and the personnel of the Tribal Court are cloaked with the sovereign immunity of the Tribe. No individual identified above shall be liable for his or her acts or failure to act under this Ordinance while acting in their official capacity.

Section 15. Amendment

This Ordinance and the procedures promulgated hereunder may be amended or rescinded by the Tribal Council at a duly called regular or special meeting.

Section 14.0 General Provisions

A. Finality of Determination

The decision and determinations of the TJHWC Court shall be final and conclusive onto all parties. There shall be no appellate review of the final decision.

B. Severability

If any provision of this Code or the application thereof to any person, entity or circumstance is held to be invalid, the remainder of the Code shall remain in effect.

C. Rules, Regulations, Policy and Procedures

The Tribal Council may establish such other rules, regulations, policy and procedures as are consistent with this Code and necessary for effective administration and enforcement of this Code. Tribal Council shall have final approval of all policies and procedures and any amendments.

D. Amendments

This Code and the procedures promulgated hereunder may be amended or rescinded by the Tribal Council at a duly called regular or special meeting.

E. Effective Date

This Code shall be effective from the date of its approval by the Tribal Council.

Section 15.0 Sovereign Immunity

Nothing in this Code is or shall be construed as a waiver of the sovereign immunity of the Tribe, the Tribal Council, or any officer, official, representative, agent, or employee of the same while acting in his or her official capacity, regardless if the suit is for monetary damages, or injunctive or declaratory relief or any other type of relief. No individual named above shall be liable for his or her acts or failure to act under this Code while acting in their lawful official capacity. The sovereign immunity of the Bishop Paiute Tribe is hereby expressly confirmed.

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CERTIFICATION

The foregoing Code was passed at a duly called meeting of the Bishop Paiute Tribal Council held on the _____ day of _____, 2021 with a quorum present and voting ____AYES, ____ NAYS, ____ ABSTAINING, and ____ ABSENT and the Tribal Council Chairman not voting/voting.

BISHOP TRIBAL COUNCIL:

ATTEST:

Tilford P. Denver,

Steven Orihuela,

Tribal Council Chairman

Tribal Secretary

Date: _____

Date: _____

Legislative History:

6/28/2012	Ordinance Drafted-
12/20/2012	Enacted as Small Claims Ordinance.
2/08/2013	Ordinance signed by Tribal Council.
6/9/2021	Public Hearing by Zoom on Amendments
6/10/2021	Public Hearing by Zoom on Amendments
XXXXX	Enacted as the Small Claims Code
XXXXX	Enforcement date