

BISHOP PAIUTE TRIBE
TITLE 5 – Children, Family, and Elder Welfare
CHAPTER 5.5 – General Welfare Benefit Ordinance
ENACTED BY TRIBAL COUNCIL: December 8, 2020

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Section 1. Title

This Ordinance shall be entitled the "General Welfare Benefit Ordinance" (herein, the "Ordinance").

Section 2. Authority

The Bishop Indian Tribal Council (“Tribal Council”), elected by the General Council to serve as the governing body of the Bishop Paiute Tribe, is empowered to promulgate and adopt resolutions, tribal programs, and ordinances with the consultation of the General Council. This includes the authority to promulgate and adopt tribal laws that provide for the general welfare, public health, and safety of tribal members and the tribal community as a whole.

Section 3. Findings

- (a) The Bishop Paiute Tribe, acting through its Tribal Council, exercises its inherent sovereignty to authorize and administer programs to benefit the general welfare of the tribal community.
- (b) The tribal customs and traditions of the Tribe confirms the sovereign duty and responsibility of the Tribal Government to exercise the right of self-government to promote the general welfare of the Tribe.
- (c) The Tribe has a long history of providing benefits to the tribal community, and these Tribal benefit programs are fundamental to the preservation of the Tribe's sovereignty, the general welfare of its members and the preservation of its culture.
- (d) The Tribal Council is committed to making reasonable efforts to provide necessary and appropriate general welfare assistance to the tribal community, including assistance in, among other things: housing, education, public health and safety, special assistance to children, the elderly and disabled individuals, nutrition, and the welfare of families, emergency and disaster aid of all kinds, as well as benefits that support and enhance tribal culture and tribal values.
- (e) The Tribe, and not the federal government, is in the best position to determine the needs of the Tribe's members and the tribal community as a whole, and to provide for the general welfare of tribal members and the tribal community as a whole.
- (f) Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, Public Law 113-168, 26 U.S.C. (Internal Revenue Code) § 139E ("Tribal General Welfare Exclusion Act" or "IRC 139E"), and the IRS, through its traditional application of the general welfare doctrine, have long recognized the sovereign right of Indian tribal governments to provide financial assistance to individuals under certain circumstances on a non-taxable basis.
- (g) The Tribe provides a broad range of benefits to its members and, in some instances, to nonmembers, which serve general welfare needs, and the recipients of such benefits should not be taxed for their receipt of such benefits.

Section 4. Purpose; Intent.

- A. The purposes of this Ordinance are to:
 - 1. Ensure that the general welfare benefits and financial assistance that the Tribe provides to Tribal members and, in some instances, to nonmembers, are excluded from the recipients' gross income for tax purposes, to the fullest extent permitted by law; and
 - 2. Establish a procedure for the Tribal government to assess the general welfare needs of the tribal community and to adjust the Tribe's tax treatment of benefits accordingly.
- B. It is the Tribe's intent that all benefits provided to any Tribal member or, in some instances, to nonmembers, pursuant to a Tribal government program shall qualify as General Welfare Benefits or shall otherwise qualify as benefits that are excluded from the gross income of the recipient for tax

purposes, to the maximum extent permitted by law. Without limitation, the following benefits shall be treated as non-taxable hereunder:

1. Benefits that satisfy the requirements under Section 139E and all similar IRC provisions, policies, guidance and opinions;
2. Benefits that satisfy the requirements for "safe harbor" under applicable law, including IRS Revenue Procedure 2014-35;
3. Benefits that qualify for exclusion from gross income under the traditional general welfare doctrine used by the IRS; and
4. Benefits that meet any other express exemption under the Internal Revenue Code, such as the exemption provided for tribal medical expenses under IRC 139D, or that meet other recognized exemptions including, for example, resource or land-based exemptions under 25 U.S.C. §§ 117a-b, 1407, and 1408.

Section 5. Construction

- A. This Ordinance shall be liberally construed to accomplish its purposes and intent and to preserve the principles of tribal law, customs, and traditions.
- B. Tribal laws under which general welfare benefits are provided shall be liberally construed to accomplish the purposes and intent of this Ordinance, to the fullest extent such construction is consistent with such tribal laws.

Section 6. Non-taxable Benefits

Sale of legal fireworks within the exterior boundaries of the Bishop Paiute Reservation are governed by the following:

- A. The sale of legal fireworks within the exterior boundaries of the Bishop Paiute Reservation is authorized only by an individual, organization or business entity that has purchased a permit from the Bishop Paiute Tribe.
- B. The purchase of the fireworks permit shall be **mandatory**.
- C. A fireworks permit shall be issued upon payment to the Bishop Paiute Tribe.
- D. A deposit may be required at the time of the purchase of a fireworks permit. The deposit will be refunded upon a showing the immediate area of the fireworks sales has been satisfactorily restored to its prior condition.

Section 7. Benefit Program Eligibility

Nothing in this Ordinance shall alter or determine the eligibility criteria, or the amount of benefits for which recipients are eligible, established by the Tribal law or program under which those benefits are provided.

Section 8. Benefit Program Requirements

Benefits shall qualify as General Welfare Benefits only if:

- (a) The benefits are provided under a Tribal program (including a program established by tribal custom or government practice) that is administered under specified guidelines;
- (b) The program's guidelines do not discriminate in favor of members of the Tribal Council;
- (c) The benefits are available to any tribal member who meets such guidelines;
- (d) The benefits are for the promotion of the general welfare;
- (e) The benefits are not lavish or extravagant; and
- (f) The benefits are not compensation for services.

Section 9. Compensation Exemption

Any items of cultural significance, reimbursement of costs, or cash honoraria for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as compensation for services.

Section 10. Benefit Availability

Benefits are considered "available to any tribal member" who meets a program's guidelines even though, as a practical matter, budgetary constraints may make the benefits unavailable to all eligible members.

Section 11. State Harbor

The IRS has published Revenue Procedure 2014-35, "Application of the General Welfare Exclusion to Indian Tribal Government Programs that Provide Benefits to Tribal Members," which provides categorical "safe harbors" under which the IRS will "conclusively presume" that "individual need" exists for payments made under certain programs of Tribal governments. Following Congress' enactment of the Tribal General Welfare Exclusion Act (IRC 139E), the IRS published Notice 2015-34, which stated that "Section 139E codifies (but does not supplant) the general welfare exclusion for certain benefits provided under Indian tribal government programs. Taxpayers may continue to rely on Rev. Proc. 2014-35, which is broader than § 139E in some respects"

Section 12. Specific Safe Harbor Programs

Benefits provided under the following Tribal programs qualify for "safe harbor" treatment. Example benefits listed within parentheses are illustrative and not intended to be an exhaustive list.

A. Housing programs. Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that:

- (1) Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;
- (2) Enhance habitability of housing, such as be remedying or improving safe water, sewage, sanitation service, safety (including but not limited to mold or other air quality remediation), or heating or cooling issues and energy reduction work;

- (3) Provide basic housing repairs or rehabilitation (including but not limited to roof and window repair and replacement); and
- (4) Pay utility bills and charges (including but not limited to water, electricity, gas, propane or oil, and basic communications services such as phone, internet, and cable).

B. Educational programs. Programs to:

- (1) Provide students (including but not limited to post-secondary students) transportation to and from school, tutors, and supplies (including but not limited to clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities;
- (2) Provide tuition payments for students (including but not limited to allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education;
- (3) Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and
- (4) Provide job counseling and programs for which the primary objective is job placement or training, including but limited to allowances for:
 - a. Expenses for interviewing or training away from home (including but not limited to travel, auto expenses, lodging, and food);
 - b. Tutoring; and
 - c. Appropriate clothing for a job interview or training (including but not limited to an interview suit or a uniform required during a period of training) and clothing for their initial days of work.

C. Elder and disabled programs. Programs for individuals who have attained age 55 or are mentally or physically disabled or partially disabled (as defined under applicable law, including Tribal law) that provide:

- (1) Meals through home-delivered meals programs or at a community center or similar facility or the purchase of food and necessary personal welfare supplies like cleaning and paper goods;

- (2) Home care such as assistance with preparing meals or doing chores, or day care outside the home;
- (3) Local transportation assistance;
- (4) Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).

D. Other qualifying assistance programs. Programs to:

- (1) Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between locations on the reservation, and from home to service area, or service unit areas and facilities that provide essential services to the public (such as medical facilities and grocery stores)
- (2) Pay for the cost of transportation, temporary meals, and lodging of a tribal member or qualified nonmember while the individual or a member of his or her immediate family or significant partner is receiving medical care away from home;
- (3) Provide assistance to individuals in exigent circumstances, including but not limited to the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses;
- (4) Pay costs for temporary relocation and shelter for individuals involuntarily displaced from their homes (including but not limited to situations in which a home is destroyed by a fire or disaster);
- (5) Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals; and
- (6) Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).

E. Cultural and religious programs. Programs to:

- (1) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to attend or participate in an Indian tribe's cultural, social, religious, or community activities, such as pow-wows, ceremonies, and traditional dances;
- (2) Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the tribe, including but not limited to other Indian reservations;
- (3) Pay the costs of receiving instruction about an Indian tribe's culture, history, and traditions (including but not limited to traditional language, music and dances);

- (4) Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and
- (5) Pay transportation costs and admission fees to attend education, social, or cultural programs offered or supported by the Tribe or another tribe.

F. Emergency Assistance. Programs to:

- (1) Assist tribal members in the event of a local or national health or safety emergency which may include, but are not limited to:
 - a. Programs to pay the costs of food, utilities, housing, medical care, safety, temporary educational or re-education or job training programs resulting from the emergency;
 - b. Programs designed to temporarily support the general welfare of the individual or the family, including the replacement of last income;
 - c. Programs to prepare for, prevent, and respond to a disease, and to help the individual play an appropriate role in stopping the spread of the disease; and
 - d. Programs to support individuals and families during any federal, state, local or tribal government stay-at-home order, curfew, or quarantine order when that order is issued for the general welfare of the individual or the community.

Section 13. Tribal Programs Providing General Welfare Benefits

Benefits which Tribal members and, in some instances, nonmembers, receive under the Tribal programs listed below meet the standards for General Welfare Benefits. Such benefits are provided under Tribal programs administered under specific guidelines to all who qualify to receive them for the purpose of providing for the recipients' general welfare. Such benefits do not discriminate in favor of Tribal Council and are not compensation for services. The Tribal benefit programs are listed as follows:

- (a) Funeral Assistance
- (b) Safe home programs
- (c) Medical Assistance
- (d) Cultural Activity Donations
- (e) Nutrition Assistance
- (f) Emergency Assistance
- (g) Programs not listed above, including programs that are not now established or are inactive, may be designated by the Tribal Council as General Welfare Benefit programs if they meet the standards set forth in this Ordinance. Programs so designated shall be treated as though they were specifically identified herein.

Section 14. Not Lavish or Extravagant

The extent to which Tribal benefits are General Welfare Benefits, however, is limited by the requirement that the benefits are not lavish or extravagant. Benefits provided under the programs listed herein are not lavish or extravagant to the extent they do not exceed, for each individual recipient during the Tribe's fiscal year, the amount of average general welfare expenses as determined under this Ordinance.

Section 15. Income Tax Withholding

Benefits provided under this General Welfare Ordinance, not exceeding the amount referenced in this Ordinance, are General Welfare Benefits. The Tribe, or the administrator of the program under which such benefits are provided, shall not withhold income taxes from the payment of such benefits. All other payments are subject to such tax withholding requirements as may apply.

Section 16. Past Years

Nothing in this ordinance prohibits any person from retroactively excluding from his or her gross income any qualifying General Welfare Benefits received in the preceding three years, or for the maximum applicable look-back period permitted by the Internal Revenue Code. For purposes of determining gross revenue exclusions for any years prior to the enactment of this Ordinance, the "not lavish or extravagant" standard is met for benefits not exceeding the average general welfare expenses in effect at the time of enactment, as adjusted according to the Consumer Price Index.

Section 17. Tribe Not Responsible for Audits or Penalties

Although the Tribe intends the most favorable income tax treatment available under federal and state tax laws, the Tribe will not provide or pay for professional assistance to complete tax returns if benefit recipients are audited or reviewed by federal or state taxing authorities. The Tribe will not be responsible for or pay any tax penalties or interest incurred by benefit recipients in connection with their receipt of Tribal benefits. It is the responsibility of each recipient of Tribal benefits to consult his or her own tax advisor regarding the taxability or reporting obligations of Tribal benefits.

Section 18. Tax Reporting

If a determination is made that benefits provided do not constitute General Welfare Benefits or otherwise do not qualify for favorable tax treatment under applicable laws, then the Tribe may file any required report(s) to the appropriate taxing authorities regarding all such amounts unless said benefits are timely reimbursed to the Tribe.

Section 19. Governing Law

All rights and liabilities associated with the enactment of this Ordinance, or the Assistance provided hereunder, shall be construed and enforced according to the laws of the Tribe.

Section 20. Sovereign Immunity

The sovereign immunity of the Tribe is in no manner waived by this Ordinance or by any action of any Tribal employee or official acting pursuant to the Ordinance. The Tribe has not waived its tribal sovereign immunity from unconsented suit and has not consented to suit or the jurisdiction of any state or federal court or administrative body.

Section 21. Severability

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

Section 22. Effective Date

This Ordinance shall be effective as of the date it is duly adopted by the Tribal Council.

Legislative History:

11/9/20	Ordinance reviewed for Public Hearing #1 and #2.
11/12/20	Ordinance reviewed for Public Hearing #3.
12/08/20	Enacted as General Welfare Ordinance by Tribal Resolution T2020-99