

BISHOP PAIUTE TRIBE

Bishop Paiute Reservation

Bishop, California

BUSINESS PERMIT AND UTILITY TAX ORDINANCE

Adopted: 1998

As amended May 13, 2004

As amended January 12, 2006

As amended September 15, 2020

BISHOP PAIUTE TRIBAL BUSINESS PERMIT AND UTILITY TAX ORDINANCE

ORDINANCE NO. T98-04 OF 1998 AS AMENDED MAY 13, 2004 AS AMENDED JANUARY 12, 2006 AS AMENDED SEPTEMBER 15, 2020

AN ORDINANCE OF THE BISHOP PAIUTE TRIBE, THROUGH THE BISHOP PAIUTE TRIBAL COUNCIL AS GOVERNING BODY OF THE BISHOP PAIUTE TRIBE, STATE OF CALIFORNIA, PROVIDING FOR THE ESTABLISHMENT OF A SYSTEM OF BUSINESS PERMITS FOR THE PRIVILEGE OF OPERATING A BUSINESS ON THE BISHOP PAIUTE RESERVATION AND FOR THE TAXATION THEREOF.

The Bishop Paiute Tribal Council (hereinafter "Tribal Council") of the Bishop Paiute Reservation (hereinafter "Reservation") hereby ordains as follows:

The Tribal Council finds and declares that the provision of needed services to Tribal members including the areas of social and economic growth for the Tribe are a high priority. In order to fund these needed services, the Tribal Council has found it necessary to implement the present system of utility business taxation within the Reservation boundaries. The Tribal Council also finds and declares that the goal of improving economic and social plight of Tribal members, and the fulfillment of Congress' and the Tribal Council's unique obligation toward Tribal members would be hampered by imposing on Tribal members taxation in the same manner as non-Tribal members owning and operating businesses on the Reservation. Finally, the Tribal Council recognizes that the property and business interests of Tribal members on the Reservation are legally and qualitatively distinct from other non-Tribal member property and business interests created on Tribal land. Therefore, the Tribal Council finds and declares it necessary that businesses and property interests owned by Tribal members be exempt from the provisions of this Ordinance, in accordance with the provisions below.

The Tribal Council also declares it has the sovereign authority to regulate commerce on the Reservation and must regulate commerce to ensure compliance with tribal law and for the safety of tribal members and the tribal community.

CHAPTER ONE: BUSINESS PERMITS

SECTION 1. PERMITS GENERALLY

It shall be unlawful to operate, conduct or maintain any business on the Reservation unless a valid Business Permit ("Business Permit") to operate such business is first obtained from the Tribal Council in the manner set forth in this Ordinance. The duration of any and all Business

Permits granted in accordance with this Ordinance shall not exceed one year. Accordingly, any and all Business Permits must be renewed on an annual basis.

SECTION 2. DEFINITIONS

“Business” for the purpose of this Chapter in this Ordinance is defined as any person or entity that meets the following criteria:

- (a) Whose primary place of business is on the Reservation;
- (b) That is engaged in any activity on the Reservation, whether temporary, seasonal, permanent or otherwise, that is either
 - (1) buying, selling, bartering, or trading goods or commodities, or
 - (2) buying, selling, bartering, trading, or providing services, or
 - (3) buying, selling, bartering, trading, or providing information;
- (c) The object of which activity is to be profit, economic or non-economic benefit, advantage, barter, trade or other economic activity calculated to create a return of some economic value, or for no economic value in the case of not for profit activity; and
- (d) includes Billboard Communication Systems and any government, governmental entities, or arms, departments, or agencies of any governments;

provided, however, that a transaction referenced in subsection (b) above regarding property, goods, commodities, information or services that is an isolated transaction, and is intended to be such an isolated transaction, shall not be considered to be a “business” under this Ordinance.

"Billboard Communication System" shall include, but not be limited to any and all structures, scaffolding and/or surfaces that display advertising to the general public and for which fees are paid either by or to the owner of such structures, scaffolding and/or surfaces.

“Vendors” for the purpose of this Chapter in this Ordinance is defined as any person or entity selling, purchasing, or trading goods, services or information, from a moveable vehicle or temporary booth or structure on the Reservation.

SECTION 3. INAPPLICABLE TO VENDORS; SEPARATE PERMIT REQUIRED

This Chapter of this Ordinance does not apply to Vendors, as Vendors must apply for and obtain a Vendor Permit from Tribal Administration.

SECTION 4. PERMIT ELIGIBILITY

To be eligible for a Business Permit, a person must:

- (a) submit an application in accordance with Section 5; and

- (b) must provide written verification from the Bishop Paiute Tribal Employment Rights Department that they have complied with the Tribal Employment Rights Ordinance of the Bishop Paiute Tribe, including but not limited to submission and approval of a Compliance Plan Agreement.

SECTION 5. APPLICATIONS AND FEE

Application for any Business Permit shall be filed with the Tribal Council, or the designee of the Tribal Council, upon a form prescribed by the Tribal Council, and shall contain such information the Tribal Council deems necessary.

The Application Fee for a Business Permit shall be twenty-five dollars (\$25.00) and is non-refundable.

SECTION 6. ACTION ON APPLICATIONS

- (a) **Required Action and Timeframe.** The Tribal Council, or its designee, shall take action to approve or disapprove the application for a Business Permit within twenty (20) business days of receiving the application. Should the application be denied for any reason, the Tribal Council or its designee shall set forth the reasons, in writing, to the applicant. If the no action is taken upon a permit within twenty (20) business days of its receipt, then the application shall be deemed denied, unless the Tribal Council or its designee and the applicant agree to extend the time for review.
- (b) **Authority of TERO Commission and Appeal from Denial.** Tribal Council hereby gives the Bishop Paiute Tribal Employment Rights Commission (“TERO Commission”) the authority to hear appeals regarding denials of Business Permit applications.

The applicant shall have 30 days from the date of the notice of denial to appeal that denial, in writing, to the TERO Commission. The appeal shall set forth the reasons the applicant believes the application should be granted.

The TERO Commission, upon receipt of a written appeal of denial shall informally meet with the applicant at its next regular meeting possible while giving the denied applicant at least five (5) business days’ notice to the appellant. The action of the TERO Commission on the appeal shall be final.

SECTION 7. BUSINESS PERMIT FEE AND FEE EXEMPTIONS

Unless exempted below, approved applicants shall pay a Business Permit fee of five hundred dollars (\$500.00) prior to issuance of a Business Permit which is non-refundable. The following persons are exempt from the Business Permit fee:

Any enrolled Tribal member of the Bishop Paiute Tribe (“Tribal Member”) owning, operating or maintaining a business on the Reservation or any business entity wholly owned by Tribal Members upon showing proof of enrollment of all owners to the Tribal Council or its designee;

- (a) A business entity that is certified as an “Indian Owned Business” by the Tribal Employments Rights Department. To qualify as an Indian Owned Business (1) at least fifty-one percent (51%) or more of the ownership of the business entity is held by an Indian or Indians, and (2) fifty-one percent (51%) or more of the actual management and control is exercised by an Indian or Indians,. For purposes of this Section, the term “Indian” shall mean any person who is a Tribal Member, a member of a federally recognized tribe or a member of a non-federally recognized tribe or a lineal descendant of someone listed on the California judgment rolls;
- (b) Any business that is a non-profit enterprise or furthers the public good, which is approved for an exemption by the Tribal Council or its designee; and
- (c) In any given year, any business that operates a utility and which pays the business utility tax in accordance with Chapter 2, Section 3 or pays a Franchise Fee in accordance with Chapter 2, Section 4.

SECTION 8. PROMINENT DISPLAY REQUIRED

Every Business Permit must be prominently displayed at each business location, so they are easily visible to staff designated by Tribal Council to inspect such businesses and the public.

SECTION 9. TRANSFER OF PERMITS AND PREMISES

No permit identified in this Ordinance may be transferred, nor shall the permit apply to any premises other than those originally specified as the location of the business activity permitted, except upon the written permission of the Tribal Council or its designee, granted upon application of the original grantee in the same manner as the original application for such permit as specified in this Ordinance.

SECTION 10. REVOCATION AND SUSPENSION OF PERMIT.

- (a) **In General.** Any permit granted pursuant to this Ordinance may be revoked or suspended by the Tribal Council or its designee for any reason which in their sole discretion is determined to be just cause, including, but not limited to, failure to comply with any tribal law and failure to pay the utility business tax as required by Chapter 2 of this Ordinance.
- (b) **Authority of the TERO Commission and Required Hearing.** Tribal Council hereby gives the Bishop Paiute Tribal Employment Rights Commission (“TERO

Commission”) the authority to hold informal hearings regarding revocations and suspensions of Business Permit applications.

All revocations and suspensions shall be made only after an informal hearing granted to the holder of the permit so revoked or suspended, held before the TERO Commission after five (5) business days’ notice to such permit holder, stating generally the grounds of complaint against him or her and stating the time and place where such hearing will be held. In the event such revocation or suspension is upheld by the TERO Commission, any permit issued under this Ordinance shall be surrendered to the TERO Commission.

Such revocation or suspension of any permit shall be in addition to any other penalties more specifically provided in this Ordinance.

CHAPTER 2: UTILITY BUSINESS TAX

SECTION 1. UTILITY BUSINESS TAX GENERALLY

It is unlawful for any person, either for himself or herself or any other person, to carry on any utility taxed pursuant to this chapter on the Reservation, without paying the business utility tax and procuring a utility business tax certificate from the Tribal Council. The operation of any utility taxed pursuant to this chapter without a certificate from the Tribal Council shall constitute a violation of this Ordinance, for each and every day that such business is so carried on.

SECTION 2. DEFINITIONS

Except where the context otherwise requires, the following terms shall, for the purposes of this chapter, have the following meanings:

- (a) "Gross receipts" means annual total sales of utility service within the boundaries of the Reservation, less rebates, and refunds and for uncollectible accounts;
- (b) "Utility" means and includes the selling or reselling, or otherwise providing electricity, telephone, gas through gas mains, water through water mains, cable television or cellular telephone service, whether or not such utility is regulated by the California Public Utilities Commission;
- (c) "Tribal Council" means the Bishop Paiute Tribal Council;
- (d) "Tribe" means the Bishop Paiute Tribe;
- (e) "Person" shall have the same meaning as in Section 4(o) of Ordinance No. 02 of 1996 (the “Bishop Paiute Tribal Property Tax Ordinance”); and
- (f) "Reservation" means the Bishop Paiute Reservation.

SECTION 3. IMPOSITION OF TAX

Every person engaged in the operation of a utility shall pay a utility business tax of 2% of Gross Receipts arising from the sale of utility services on the Reservation in the prior calendar year, but in no instance shall the tax be less than \$500.00. Upon receipt of payment of the utility business tax, the permittee shall receive a tax certificate from the Tribal Council or its designee for the year in which the return is filed.

SECTION 4. FRANCHISE FEE; RELIEF FROM UTILITY BUSINESS TAX

The utility business tax established by this chapter shall not apply to any person who has filed franchise fee returns and paid franchise fees in accordance with Ordinance No. 01 of 1996 (“An Ordinance of the Tribal Council, as Governing Body of the Bishop Paiute Reservation, State of California, Providing for the Granting of Franchises to Utilize Rights-of-Way Across Tribal Property to Provide Telephone, Gas, Oil, Pipeline, Electrical, Water or Cable Television Service.”)

SECTION 5. WHEN TAX IS DUE

The first year estimated tax is due within 30 days after the application for a Business Permit is approved by the Tribal Council or its designee. Thereafter, the tax imposed by Section 3 is due and shall be paid with a return showing the computation of the tax on a form specified by the Tribal Council on March 1 of each year.

SECTION 6. COMPUTATION OF FIRST YEAR ESTIMATED TAX

If the business permittee is a newly commencing business on the Reservation, the permittee may estimate gross receipts for the first year the permit is in effect by any means found reasonable by the Tribal Council or its designee. If the method of estimation is determined by the Tribal Council or its designee to be unreasonable, average industry figures may be used. The amount estimated for the first year shall be prorated for the number of remaining months in the year.

SECTION 7. COMPUTATION OF TAX IN SUBSEQUENT YEARS

For subsequent years, the amount of tax due shall be based on actual gross receipts for the previous calendar year as prescribed in Section 3; however, should the prior year's gross receipts have been based on less than 12 calendar months of business operations, the Tribal Council shall have the option of either 1) annualizing the gross receipts actually reported and assessing tax based on the annualized gross receipts; or 2) using a reasonable estimate of annual gross receipts in accordance with Section 6.

SECTION 8. PENALTIES

If the taxes imposed by this chapter are not paid by the respective due dates, a penalty shall be imposed of 25% of the amount of delinquent tax due.

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SECTION 9. INTEREST

In addition to the penalties imposed, any person who fails to remit any utility business tax imposed by the provision of this chapter shall pay interest at the rate of one percent per month or fraction thereof, on the amount of delinquent tax inclusive of penalties from the date on which the utility business tax first became delinquent until paid.

SECTION 10. WAIVERS

The utility business tax, penalties, or interest may be waived only by the Tribal Council for reasonable or good cause.

SECTION 11. RECORD KEEPING AND AUDIT

The Tribal Council or its designee is authorized to examine the books, papers, tax returns and records of any person subject to this chapter for the purpose of verifying the accuracy of any return or declaration made, or if no return or declaration was made, to ascertain the utility business tax due. Every person subject to this chapter shall keep and preserve for a period of three years such records as may be necessary to determine the amount of tax for which the person is liable.

SECTION 12. DEFICIENCY DETERMINATION

If the Tribal Council or its designee, in the exercise of reasonable discretion, is not satisfied that the computation of the tax due is accurate, the Tribal Council or its designee may recompute and determine the amount to be paid upon the basis of facts available to it from an audit of the permittee's books and records, or upon the basis of any factual information that may come into the Tribal Council's possession. One or more deficiency determinations may be made for one or for more than one period. In making a determination, overpayments from prior periods may be offset against underpayments for any period or periods.

The Tribal Council or its designee shall give the permittee written notice of any deficiency determination, including the facts on which the determination is based.

SECTION 13. DEFICIENCY IF NO RETURN OF TAX FILED

If no return of tax is filed, the Tribal Council or its designee may, in the exercise of reasonable discretion, recompute and determine the amount to be paid upon the basis of any factual information that may come into the Tribal Council's possession. The estimate shall be made for the period or periods for which the permittee has failed to file a return. In addition to the amount of the tax estimated, the Tribal Council or its designee shall add the penalty provided for in Section 8. One or more deficiency determinations may be made for one or for more than one period. In making a determination, overpayments from prior periods may be offset against underpayments for any period or periods.

The Tribal Council or its designee shall give the permittee written notice of any deficiency determination, including the facts on which the determination is based.

SECTION 14. REDETERMINATION

Any person against whom a determination is made under this chapter may file a petition for redetermination within 30 days of the date on the notice of determination. The petition shall set forth the permittee's name, the period covered, the amount protested, and the facts on which the petition is based. If a petition for redetermination is not filed, the determination becomes final on the 31st day after the date on the notice of determination. If a timely petition for redetermination is filed, the Tribal Council or its designee shall consider the reasons set forth in the petition, and, if requested by the petitioner, grant an oral hearing. If no hearing is requested, the Tribal Council or its designee may grant the petition, deny the petition, or adjust the amount of the determination against the permittee. All hearings on petitions shall be before the Tribal Council after a minimum 30-day advance written notice to the permittee, and pursuant to such hearing regulations as the Tribal Council or its designee shall adopt.

The order or decision of the Tribal Council or its designee shall become final 30 days after notice of the order or decision is sent to the permittee. All determinations are due and payable at the time they become final.

CHAPTER 3: GENERAL PROVISIONS

SECTION 1. REGULATORY AUTHORITY

The Tribal Council, or its designee, may enforce the provision of this Ordinance by the enactment of rules and regulations, including the imposition and collection of administrative fees and penalties.

SECTION 2. SEVERABILITY

If any provision of this Ordinance, or its application to any person, legal entity or circumstance is held invalid, the remainder of the Ordinance, or its application of the provision to other persons, legal entities or circumstances, shall not be affected.

SECTION 3. SOVEREIGN IMMUNITY

The sovereign immunity of the Tribe is in no manner waived by this Ordinance, by any action of its designees or any of the employees of the Tribe acting pursuant to this Ordinance. The sovereign immunity of the Tribe shall extend to its designees at all times while carrying out the enforcement of this Ordinance.

SECTION 4. AMENDMENTS

This Ordinance may be amended by a majority vote of the Tribal Council.

SECTION 5. EFFECTIVE DATE

This Ordinance shall be effective September 15, 2020, after approval by the Tribal Council.

CERTIFICATION

The foregoing Amended Ordinance was passed at a duly called meeting of the Bishop Paiute Tribal Council held on the 15th day of September, 2020 with a quorum present and voting 4 AYES, 0 NAYS, 0 ABSTAINING, and 0 ABSENT. Chairman voting only in case of tie.

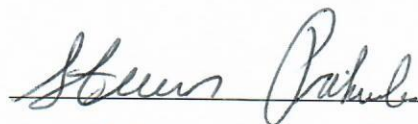
BISHOP PAIUTE TRIBAL COUNCIL:

ATTEST:



Tilford Denver, Chairman

Date: 9-15-2020



Steven Orihuela, Secretary

Date: 9-15-2020