

Yurok Tribal Code, General Welfare

YUROK TRIBE GENERAL WELFARE ORDINANCE

Pursuant to its authority under Article IV, Section 5 of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance to, through Approved Programs, provide assistance to Yurok Tribal Members that promotes the General Welfare of the Tribe.

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GENERAL PROVISIONS

SECTION 3001. Short Title

This Ordinance shall be referred to as the Yurok General Welfare Ordinance.

SECTION 3002. Findings

- (a) Traditionally, the Yurok Tribe has exercised its sovereign right to provide assistance that promotes the general welfare and best interests of the Tribe.
- (b) The Yurok Tribe affirms its sovereign right to provide assistance to Yurok Tribal Members on a non-taxable basis, pursuant to the General Welfare Doctrine.
- (c) Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, and the Internal Revenue Service, through its traditional application of the General Welfare Doctrine and subsequent guidance, have recognized the sovereign right of the Yurok Tribe to provide assistance to its Tribal Members under certain circumstances on a non-taxable basis.
- (d) The Yurok Tribe wishes to ensure that no Tribal member in the community will be without basic fundamental necessities of life. The assistance provided under this Ordinance will not completely fund all members' financial and other needs, but is designed to lessen the burden of living expenses in their everyday lives.

SECTION 3003. Purpose

The purpose of this Ordinance is to, through Approved Programs, provide assistance to Yurok Tribal Members that promotes the General Welfare of the Tribe.

This Ordinance provides a framework for Approved Programs to follow to ensure compliance with the General Welfare Doctrine and Internal Revenue Code Section 139E. Further, it is the intent of the Tribal Council that all assistance provided under this Ordinance:

- (a) is available to any Recipients who satisfy the program policies, subject to budgetary restraints;
- (b) is made under a Program that does not discriminate in favor of members of the Tribal Council;
- (c) is not provided as compensation for goods and/or services; and
- (d) is not lavish or extravagant under the facts and circumstances, as determined by the Tribal Council.

SECTION 3004. Ordinance Adopted by Emergency Legislative Act

This General Welfare Ordinance was adopted by emergency legislative act, pursuant to Section 5009 of the Yurok Public Hearing Ordinance on December 28, 2017. The Yurok Tribal Council found that there was an immediate and urgent threat to the welfare of Tribal members and the Tribe.

SECTION 3005. Ratification of Prior Acts

- (a) This Ordinance is not to be construed as creating new general welfare assistance rights, which are an inherent right of Yurok Tribal sovereignty. Rather, this Ordinance is intended to codify existing procedures used by the Yurok Tribe to administer its general welfare assistance.
- (b) Assistance provided prior to the enactment of this Ordinance is hereby ratified and confirmed as general welfare assistance provided pursuant to the exercise by the Yurok Tribe of its inherent tribal sovereignty.

SECTION 3006. Definitions

- (a) “Approved Program” means any program(s) to provide general welfare assistance that is intended to qualify for treatment under the General Welfare Exclusion, which is adopted as a policy by resolution of the Tribal Council.
- (b) “Benefits” means any Approved Program assistance, including payments, which is provided pursuant to this Ordinance.
- (c) “Compensation” for services should reflect that qualifying Programs are not disguised employment. However, this shall not prevent the Tribe from structuring Programs with community service ties so long as such ties are consistent with the General Welfare Exclusion.
- (d) “Constitution” means the Constitution of the Yurok Tribe.
- (e) “General Test” means any assistance will be treated as meeting the General Test under the General Welfare Exclusion if the Benefit is:
 - (1) Paid by or on behalf of the Yurok Tribe;
 - (2) Under a Program;
 - (3) Based on either needs of the Indian community itself or upon individual needs of the recipient (which need not be financial in nature);
 - (4) Not Compensation for services;
 - (5) Not per capita payments.

- (f) “General Welfare Exclusion” means any Benefits shall be treated as non- taxable under federal law so long as it satisfies the requirements for exclusion under Code Section 139E, it is provided under a Safe Harbor Program, or it meets the General Test.
- (g) “General Welfare Need” is a need, in the sole discretion of the Tribal Council, which must be met to ensure the Tribe’s longevity as a self-governing Indian tribe, and includes needs in the areas of health, education, self-sufficiency, self-determination, the maintenance of culture and tradition, entrepreneurship, and employment.
- (h) “Lavish” or “Extravagant” shall have the meaning determined by the Tribal Council in its sole discretion based on all facts and circumstances, taking into account needs unique to the Yurok Tribe as well as the social purpose being served by the particular Assistance at hand, except as otherwise may be required for compliance with final guidance issued under Internal Revenue Service Code Section 5 139E following consultation between the Tribe and the Internal Revenue Service.
- (i) “Recipient” means any Tribal Member entitled to receive Assistance in accordance with specific Approved Program requirements.
- (j) “Tribal Member” means any person who is a duly enrolled member of the Yurok Tribe.

CHAPTER 2. ADMINISTRATION

SECTION 3007. General Welfare Doctrine and IRS Revenue Procedure 2014-35/Tribal General Welfare Exclusion of 2014

- (a) The Internal Revenue Service recognizes that Benefits to Recipients under a legislatively provided Approved Program for the promotion of the general welfare of the Yurok Tribe is excludable from the gross income of those Recipients.
- (b) In addition, the Internal Revenue Service, in IRS Revenue Procedure 2014-35, provided for safe harbor programs under which, if approved and in writing, need would be presumed and benefits would be excluded.
- (c) The Benefits authorized by this Ordinance is intended to qualify for such favorable tax treatment under the General Welfare Doctrine to the fullest extent permitted at law.
- (d) Assistance authorized by this Ordinance shall be an unfunded arrangement for tax purposes and shall be limited to funds appropriated, at the discretion of the Tribal Council. All amounts budgeted by the Yurok Tribe for Assistance shall remain general assets of the Tribe until such payments are disbursed.

- (e) Benefits are not subject to information reporting by the Tribe to the Internal Revenue Service.
- (f) Without limitation, the following Benefits shall be treated as non-taxable hereunder:
 - (1) Benefits that satisfy the requirements for the exemption under Code Section 139E;
 - (2) Benefits that are provided under an IRS Safe Harbor Program;
 - (3) Benefits that qualify for exclusion under the IRS General Test of General Welfare exclusion; or
 - (4) Benefits that meet another express exemption under the Internal Revenues Code, such as the exemption provided for tribal medical expenses under Internal Revenue Code Section 139D, or that meet other recognized exemptions including, for example, resource or land-based exemptions under 25 USC Sections 117a-b, 1407 and 1408.

SECTION 3008. Non-Resource Designation

The Yurok Tribe does not guarantee Benefits under this Ordinance. Benefits shall not be treated as a resource or asset of a Recipient for any purpose; and no Recipient shall have an interest in or right to any funds budgeted for, or set aside for, Approved Programs until paid. Tribal Council reserves the right to cancel, adjust, modify or revoke any Benefit treated as a resource of the Recipient. The Approved Programs shall be administered at all times to avoid triggering of the doctrines of “constructive receipt” and/or “economic benefit.”

SECTION 3009. Governing Law; Sovereignty

- (a) All the rights and liabilities associated with the enactment of this Ordinance, or the Benefits made hereunder, shall be construed and enforced according to the laws of the Yurok Tribe and applicable federal law.
- (b) Nothing in this Ordinance or the related policies or procedures adopted for its implementation, if any, shall be construed to make applicable to the Yurok Tribe any laws or regulations which are otherwise inapplicable to the Yurok Tribe, or from which the Yurok Tribe is entitled to exemption because of its sovereign status.

SECTION 3010. Federal Trust Obligations

- (a) The Yurok Tribe reserves the right to provide Benefits in circumstances where federal funding is insufficient to operate federal programs designed to benefit

Recipients and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations.

- (b) The Yurok Tribe's adoption of its Approved Programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Tribe's right to seek funding shortfalls or to enforce the trust rights of the Tribe and its citizens. The Tribe shall be entitled to government-to-government consultation and coordination rights in regard to this Ordinance with the federal government.

SECTION 3011. Tribal Council Approved Programs

The Tribal Council shall adopt Approved Programs consistent with the purposes of this Ordinance. Each Approved Program shall be consistent with the General Welfare Doctrine as to purpose, eligibility, and funding.

SECTION 3012. Eligibility

- (a) Eligibility for Benefits shall be limited to Tribal Members. Approved Programs may limit benefits to an identified group of Tribal Members.
- (b) Programs comprising descriptions, including eligibility rules and limitations, may be presented to the Tribal Council for approval in accordance with this Ordinance. In the absence of specific requirements to the contrary, all Programs shall be deemed to incorporate eligibility criteria that complies with Code Section 139E.
- (c) Only those Programs that are adopted as a policy by resolution of the Tribal Council shall be considered to be in force and effect.

SECTION 3013. Limited Use of Assistance Payments

Where applicable, a Benefit must be used for the purpose stated in the Approved Program. In the event that a Benefits is used or pledged for a purpose inconsistent with the purpose set forth in the Approved Program, the provisions in Section 3016 shall apply.

SECTION 3014. Programs Not Limited to Means Testing

Programs that qualify under Code Section 139E or the IRS Safe Harbor shall not require a showing of individual need or means testing in order to achieve non-taxable treatment under the General Welfare exclusion. The Tribal Council also reserves the right to provide community-based Programs and programs based on non-financial need under the General Test that are not individually means tested. The Tribal Council recognizes that means testing can distort certain tribal cultural and community values. However, the Tribal Council may develop programs that are financial need based in order to help those most in need of the assistance.

SECTION 3015. Anti-Alienation

A Recipient's eligibility for a Benefit is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the Recipient.

SECTION 3016. Dispute Resolution

- (a) Where there is an allegation that a Recipient has used or pledged a Benefit in violation of Section 3013, the Tribal Court shall have jurisdiction to determine the dispute.
- (b) The exclusive remedy for disputes under this Ordinance shall be limited to:
 - (1) Payment of the amount of the misused Benefit back to the Yurok Tribe; or
 - (2) Alternative payment as determined by Tribal Court in accordance with Yurok tradition, and commensurate with the amount and significance of the violation.
- (c) The burden of proving that a Recipient has used or pledged a Benefit in violation of Section 3013 shall be on the Tribal Council.
- (d) Evidence of receipt(s) showing that a Recipient used the Benefit only for a General Welfare Need shall be conclusive proof that the Benefit was not misused.

SECTION 3017. Sovereign Immunity Preserved

Except as in accordance with the Yurok Tribe's Supreme Ordinance, nothing in this Ordinance shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe.

SECTION 3018. Severability

If any section, subsection, clause or Chapter is for any reason determined to be invalid or unconstitutional, such determination shall not affect the validity or constitutionality of the remainder of this Chapter.

SECTION 3019. Effective Date

This Ordinance shall take full effect immediately after adoption by Tribal Council.

CHAPTER 3. APPROVED PROGRAM POLICIES

SECTION 3020. Program Policies

- (a) Policies for Approved Programs shall be approved by the Tribal Council. At a minimum, such policies shall satisfy the requirements of this Ordinance including the following:
- (b) Indian General Welfare Benefits (Code Section 139E) Programs that meet the following criteria for exemption under Code Section 139E shall be treated as non-taxable Benefits under the General Welfare Exclusion without the Recipient having to demonstrate individual need:
 - (1) The program is administered under specified policies and does not discriminate in favor of the members of the Tribal Council;
 - (2) Program benefits are available to any Tribal citizen who meets such policy requirements;
 - (3) Program benefits are for the promotion of the general welfare;
 - (4) Program benefits are not lavish or extravagant;
 - (5) Program benefits are no compensation for services.
- (c) Ceremonial Activities: Any items of cultural significance, reimbursement of costs or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as compensation for services.
- (d) Safe Harbor programs: Programs that meet the following general criteria for safe harbor treatment, and provide qualifying safe harbor benefits, shall be treated as non-taxable Benefits under the General Welfare Exclusion without the Recipient having to demonstrate individual need:
 - (1) General Criteria for Safe Harbor Treatment:
 - (A) The benefit is provided under a specific approved program of the Tribe;
 - (B) The program has written policies specifying how individuals may qualify for the benefit;
 - (C) The benefit is available to any Tribal Member, identified group of Tribal Members, or qualified non-member who satisfy the program policies, subject to budgetary restraints;

- (D) The distribution of benefits from the program does not discriminate in favor of the governing body of the Tribe;
 - (E) The benefit is not compensation for goods or services; and
 - (F) The benefit is not lavish or extravagant under the facts and circumstances, as determined by the Tribal Council.
- (2) Specific Safe Harbors: The following benefits may be provided under a Safe Harbor program. The benefits listed in the parenthetical language herein are illustrative only, rather than an exhaustive list. Thus, a Benefit may qualify for exclusion from gross income as a Safe Harbor Program even though the benefit is not expressly described in the parenthetical language herein, provided that it meets all other requirements of the Internal Revenue Service, Article VI and Revenue Procedure 2014-35 (as may be amended):
- (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—
 - (i) Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;
 - (ii) Enhance habitability of housing, such as by remedying water, sewage, or sanitation service, safety issues (including, but not limited to, mold remediation), or heating or cooling issues;
 - (iii) Provide basic housing repairs or rehabilitation (including, but not limited to, roof repair and replacement);
 - (iv) Pay utility bills and charges (including, but not limited to, water, electricity, gas, and basic communications services such as phone, internet, and cable); or
 - (v) Pay property taxes or make payments in lieu of taxes (PILOTs).
 - (B) *Educational programs.* Programs to –
 - (i) 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;

- (ii) 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;
- (iii) 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
- (iv) Provide job counseling and programs for which the primary objective is job placement or training, including, but not limited to, allowances for expenses for interviewing or training away from home (including, but not limited to, travel, auto expenses, lodging, and food); tutoring; and 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).

(C) *Elder and disabled programs.* Programs for individuals who have reached age 60 or are mentally or physically disabled (as defined under applicable law, including, but not limited to, tribal government disability codes or laws) that provide –

- (i) Meals through home-delivered meal programs or at a community center or similar facility;
- (ii) Home care such as assistance with preparing meals or doing chores, or day care outside the home;
- (iii) Local transportation assistance; and
- (iv) Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).

(D) *Cultural and religious programs.* Programs to –

- (i) 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 ceremonies, and traditional dances;

- (ii) 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, those on other Indian reservations;
- (iii) 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);
- (iv) Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and
- (v) Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Tribe or another tribe.

(E) *Other qualifying benefit programs.* Programs to –

- (i) Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores);
- (ii) Pay for the cost of transportation, temporary meals, and lodging of a Tribal Member while the individual is receiving medical care away from home;
- (iii) Provide assistance to individuals in exigent circumstances (including, but not limited to, victims of abuse), including, but not limited to, the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses;
- (iv) Pay costs for temporary relocation and shelter for individuals displaced from their homes (including, but not limited to, situations in which a home is destroyed by a fire or natural disaster);
- (v) Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals; and

- (vi) Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).
- (3) Compensation Safe Harbor: For Safe Harbor Programs, and subject to amendments to Revenue Procedure 2014-35 hereafter, the Tribe will presume that individual need is met for religious leaders or spiritual officials or leaders (including but not limited to medicine men, and medicine women) receiving the following benefits, and that the benefits do not represent Compensation for services: benefits provided under an Indian tribal governmental Program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances, as determined by the Tribal Council, or nominal cash honoraria provided to religious or spiritual officials or leaders (including, but not limited to, medicine men, medicine women, and shamans) to recognize their participation in cultural, religious, and social events (including, but not limited to rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and subsequent honoring events).
- (4) Non-Safe Harbor Programs: Nothing in this Ordinance or the IRS safe harbor guidance shall limit the Tribe's right to provide Benefits outside of the safe harbor rules.
- (5) Any changes to the Safe Harbor programs as a result of the Indian General Welfare Exclusion Act of 2014 will be immediately incorporated, by reference, into this Ordinance.

C*E*R*T*I*F*I*C*A*T*I*O*N

THE FOREGOING EMERGENCY ORDINANCE, ENTITLED THE GENERAL WELFARE ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUOK TRIBAL COUNCIL ON DECEMBER 28, 2017, AT WHICH QUORUM WAS PRESENT, AND THIS EMERGENCY ORDINANCE WAS ADOPTED BY A VOTE OF 6 FOR, 1 OPPOSED AND 0 ABSTENTION IN ACCORDANCE WITH ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUOK TRIBE.

DATED THIS 28TH DAY OF DECEMBER 2017

Thomas P. O'Rourke, Sr., Chairperson

Yurok Tribal Council

ATTEST:

Mindy Natt, Secretary

Yurok Tribal Council