

**SHOALWATER BAY INDIAN TRIBE**

**CODE OF LAWS**



**TITLE 29**

**GENERAL WELFARE ORDINANCE**

Approved October 3, 2014

Tribal Council Resolution #10-03-14-56

SHOALWATER BAY INDIAN TRIBE  
CODE OF LAWS - TITLE NO. 29  
GENERAL WELFARE ORDINANCE

**General**

This Ordinance shall be known as the Shoalwater Bay Indian Tribe General Welfare Ordinance

- (1) **Purpose**-The first purpose of this Ordinance is to memorialize the Tribe's General Welfare policies and the procedures used by the Shoalwater Bay Indian Tribe ("Tribe") to determine what services or programs are needed to promote public health, safety and other basic need services for the general welfare of the Tribe, such as utility services, infrastructure, housing, public sanitation services, elder and disabled programs, cultural and religious programs, public education and other such functions that support the long term historical and cultural general welfare of the Tribe. The second purpose of this Ordinance is to establish basic guidelines and procedures for programs to follow to ensure compliance with the IRS's General Welfare Doctrine.
- (2) **Background and Intent** – The Tribe is a federally recognized Indian Tribe. The Constitution of the Tribe affirms the sovereign duty and responsibility of the Tribe to maintain the culture and independence of its members, to encourage the economic well-being of its members, and to promote the rights of its members and their common welfare. The Tribe exercises its sovereign power to provide member assistance consistent with the Internal Revenue Service's ("IRS") General Welfare Doctrine:
  - (a) The IRS, through its General Welfare Doctrine, has recognized the sovereign right of all governments, including federally recognized Indian Tribes, to provide public health, safety, basic need and financial support assistance to individuals under certain circumstances on a non-taxable basis.
  - (b) The Tribe, as a sovereign government, exercises its right to provide general welfare assistance through the Tribal Council's approval of programs to foster the public health, safety, basic need and financial support assistance to individuals under certain circumstances on a non-taxable basis.
- (3) **Definitions** – In construing the provisions of this Ordinance, the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or the context requires otherwise.
  - (a) "**Approved Program**" means any program or programs approved by the Tribal Council to provide assistance intended to qualify for treatment under the General Welfare Doctrine.
  - (b) "**Assistance**" means benefits or payments under an Approved Program, which are paid to or on the behalf of a Beneficiary pursuant to this Ordinance.



- (c) “**Beneficiary**” means a person or persons entitled to receive assistance payments, services or benefits pursuant to this Ordinance or an Approved Program.
- (d) “**Code**” means the Internal Revenue Code of 1986, as amended.
- (e) “**Constitution**” means the Constitution of the Shoalwater Bay Indian Tribe.
- (f) “**General Welfare Doctrine**” means the doctrine, as recognized by the IRS, permitting a sovereign Indian tribal government to provide needs based Assistance to Tribe members on a non-taxable basis. All payments qualifying for treatment under the General Welfare Doctrine must be: (1) provided on a need basis (which need not necessarily be based on individual financial needs); (2) for a purpose deemed to benefit the general welfare of the Tribe including, without limitation, the promotion of public health, safety, basic needs, education, cultural preservation, financial assistance to Tribal members consistent with the Constitution, utility services, public education and other functions which support the long term historical and general welfare of the Tribe; and (3) in no event will General Welfare Doctrine payments be made as distributions of net revenues from a gaming operation or as compensation for services.
- (g) “**Ordinance**” means the General Welfare Ordinance.
- (h) “**Tribal Council**” means the Shoalwater Bay Indian Tribal Council.

**Ratification of Prior Acts; Intent of Legislation** – This Ordinance does not establish a new program or programs. This Ordinance is intended to memorialize and confirm existing procedures used in the administration of general welfare assistance programs and services and is not to be construed as the creation of new general welfare assistance rights that previously did not exist. Assistance provided prior to the enactment of this Ordinance is hereby ratified and confirmed as general welfare assistance pursuant to the authority of the Tribal Constitution. It is intended to establish a framework to improve the coordination of general welfare compliance. Programs and services referred to herein must be authorized by independent action of the Council or its designees.

**General Welfare Doctrine** – The IRS recognizes that payments by a Tribal government to Tribal members under a legislatively provided social benefit program for the promotion of the general welfare of the Tribe are excludable from the gross income of those Tribal members who receive said payments. The assistance payments and services authorized by this Ordinance are intended to qualify for favorable tax treatment under the general welfare doctrine to the fullest extent permitted by law. All amounts budgeted by the Tribe for welfare assistance payments shall remain general assets of the Tribe until such payments are disbursed; the welfare assistance payment arrangement authorized by this Ordinance shall be an unfunded arrangement and shall be limited to appropriated funds at the discretion of the Council from time to time.

**Non-Resource Designation** – General Welfare services and payments thereunder are paid from assets of Tribal Government; all payments are based on budget availability of the Tribal

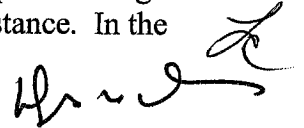


Government, and the Tribal Government does not guarantee any payments hereunder. Benefits paid hereunder on the basis of need shall not be treated as resource of the member for any purpose. The Council reserves the right to cancel, adjust, modify or revoke any benefits that are treated as a resource of a Tribal member.

**Federal Trust Obligations** – The Tribe reserves the right to provide Assistance including circumstances where federal funding is insufficient to operate federal programs designed to benefit Tribal members and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Tribe’s adoption of 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 members. The Tribe shall be entitled to government-to-government consultation and coordination rights in regard to this Ordinance.

**Provision of General Welfare Assistance**

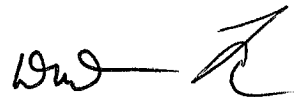
- (1) Council Approved Programs. The Tribal Council shall designate funding to programs through annual fiscal year budget processes, consistent with the purposes of this Ordinance.
- (2) Purpose. Approved Programs shall serve purposes consistent with treatment of benefits as non-taxable under the General Welfare Doctrine. Such purposes may include, by way of example and not by way of limitation, assistance for public health, medical care, education, shelter, cultural preservation, infrastructure, and subsistence benefits. Any Approved Program must be established and operated to promote the general welfare of the Tribe, including, without limitation, programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, Tribal image, maintenance of culture and tradition, entrepreneurship, and the employment of Tribal members.
- (3) Eligibility and Application Procedures. Assistance intended to qualify for General Welfare Doctrine treatment shall be limited to enrolled members of the Shoalwater Bay Indian tribe. Each Approved Program shall set forth in writing the specific eligibility rules and limitations applied to that program. Benefits must be provided pursuant to a specific Indian tribal government program. Benefits shall be paid to all tribal members who meet the eligibility guidelines, subject to budgetary limits. Distribution of Benefits from the Programs shall not discriminate in favor of members of the governing body. Benefits shall not be paid as compensation for services. Benefits should not be lavish or extravagant. Each designated department shall present program descriptions, which include eligibility rules and limitations, along with application forms and procedures, for approval by the Tribal Council or its designee. Only those descriptions, application forms and procedures which are approved by the Tribal Council or its designee shall be in force and effect.
- (4) Limited Use of Assistance Payments/Services. All Assistance disbursed or provided pursuant to this Ordinance must be used for the purpose stated in the Approved Program description, and the Tribal member’s application for the applicable Assistance. In the



event that Assistance payments and/or services are used or pledged for a purpose inconsistent with the purpose set forth in the applicable Approved Program or the Beneficiary's application, the Tribal Council or designee shall require the repayment of the welfare assistance payment. The Tribal Council or designee is authorized to offset any other payments owed to a Tribal member if such an offset is necessary to secure repayment of a welfare assistance payment consistent with this section.

### **Determination of Needs Based Programs**

- (1) Needs Basis. All Assistance disbursed pursuant to this Ordinance shall be needs based, except for assistance designated for "core needs" of the Tribe itself, as designated by The Council.
- (2) Tribe Income and Need Guidelines. The Tribal Council may establish minimum standards of living and income guidelines for purposes of determining a Beneficiary's qualification for needs based benefits hereunder. The Tribal Council may look for guidance from federal guidelines such as the federal poverty levels, federal earned income credit levels, and median income figures for national, state, local and/or other communities. However, the Tribal Council, as the sovereign government of the Shoalwater Bay Indian Tribe, shall retain ultimate authority in establishing minimum standards of living within the Tribe. In doing so, the Tribal Council may take into account such issues as number of dependents in the household, the level of household income, household expenditure, the average and median Tribe incomes, and traditional and cultural values and financial matters unique to the Tribe. Different Approved Programs may include different Income and Need Guidelines. It is recognized, for example, that certain programs with federal or state funding may require additional restrictions to meet program specific budget limitations. In the absence of a specific program guideline to the contrary, the Tribe shall use median income guidelines that are published by the United States Census Bureau or other federal agencies and adjusted annually.
- (3) Tribe Needs Determinations. The Tribal Council may also designate certain assistance or programs as necessary to satisfy a core need of the Tribe itself, such as, but not limited to, the maintenance and improvement of Tribe infrastructure and housing, the long term promotion of an educated membership, the reversal of historic trends or barriers to self-determination, preservation of Tribe traditions or culture, or the promotion of economic development and self-determination within the Tribe; provided that any such program or assistance is consistent with the general welfare doctrine as codified herein and as may be amplified in published guidance from the Internal Revenue Service.
- (4) Special Circumstances. An individual who does not satisfy specific income guidelines may nonetheless qualify for an individual needs based program; provided that the individual demonstrates special circumstances such as high financial burdens and responsibilities. Special Circumstance applications must include certifications and /or factual support established by the Council or at the program level, as applicable, showing consistency with the General Welfare Doctrine.



- (5) Infrastructure, Health Care, Housing and Education as Core Needs. Notwithstanding anything in a particular program to the contrary, Tribe infrastructure and safety standards, member health care consistent with the historic policies and purposes of the Indian Health Care Improvement Act, housing and education related assistance and incentives are core needs of the Tribe that are necessary to reverse historic trends and patterns experienced by the Tribe which will, if not reversed, hinder self-determination. The Tribal Council retains ultimate sovereign authority to determine what program incentives are necessary and in the overall interest of the Tribe for achieving its long term infrastructure, health, housing and education goals. It is also expressly recognized by the Tribe that individual financial status or other resources may not, without program assistance, be sufficient to encourage the pursuit of certain endeavors that are in the interest of the Tribe's self-determination. The Tribe has and shall develop its education, infrastructure and other core programs with the recognition that the long term benefit to the Tribe of having an educated membership and supporting certain core Tribe values is greater in the aggregate than the individual benefit conveyed to any particular recipient.
- (6) Underfunded Programs. The Tribe reserves the right to provide Assistance to compensate for federal program underfunding, which shall be treated as satisfying an overall need of the Tribe and therefore non-taxable under the General Welfare Doctrine to the same extent as if provided by the federal government. The Tribe's funding of such programs shall not waive the Tribe's right to seek funding shortfalls from the federal government and shall not relieve the federal government of its responsibilities and duties to provide such benefits.

### **Limitation on Payments; Annual Budgeting**

- (1) Limitations of Welfare Assistance Payments. The Tribal Council, within its annual budgets, by resolution or by motion, may adopt guidelines establishing the maximum Assistance payments to be made to Tribal members for certain specified purposes or programs or may delegate the establishment of such limitations to the program level. Such guidelines may also include, by way of example, factors to be considered in determining whether deviations from the general payment limitations should be permitted. Departments charged with administering particular programs may be delegated authority to adopt program guidelines to an extent not contrary to the overall guidelines and limitations established by the Tribal Council hereunder.
- (2) Annual Budgeting: Unfunded Program. The Tribal Council, through its annual budgeting process, by resolution or by motion, shall designate those funding sources that are available for the payment of Assistance benefits. Notwithstanding anything to the contrary, the Assistance payments authorized hereunder shall be "unfunded" for tax purposes and no Beneficiary shall have an interest in or right to any funds budgeted for or set aside for Assistance payments until actually paid. Assistance benefits shall remain assets of the Tribe until distributed, and the Approved Programs shall be administered to avoid premature taxation through the doctrines of constructive receipt and /or economic benefit.



### **Forfeiture of General Welfare Assistance**



- (1) Forfeiture. Notwithstanding anything herein to the contrary, Assistance benefits may be revoked or forfeited for any Beneficiary who is found to have misapplied program funds or to have made any misrepresentations during the application process. Assistance may also be forfeited should said benefits be treated as a resource to the detriment of the Tribe or a Beneficiary. The Tribe shall have a right of recovery with regard to any excess or improper payments hereunder.
- (2) Due Process. Each program shall offer procedures that afford a Beneficiary an opportunity to address fairly forfeiture issues or concerns with the program director or designee.
- (3) Anti-Alienation. A Tribal member's rights to apply for General Welfare assistance payments and /or services under this Ordinance are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, levy, attachment or garnishment by creditors.

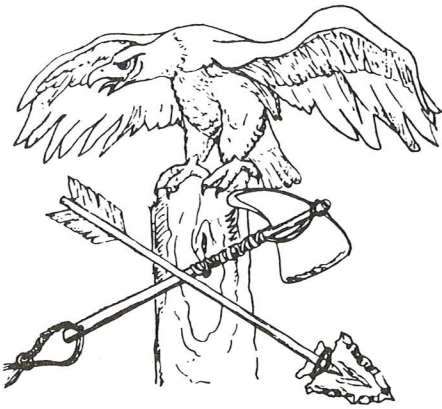
### **Governing Law**

All rights and liabilities associated with the enactment of this Ordinance, or the welfare assistance payments made hereunder, shall be construed and enforced according to the laws of the Shoalwater Bay Indian Tribe.

### **Severability**

If any provision of this Ordinance is held to be invalid, the remainder of this Ordinance shall not be affected.



# SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590  
Telephone (360) 267-6766 • FAX (360) 267-6778

## SHOALWATER BAY INDIAN TRIBE RESOLUTION # 10-03-14-56

### **RE: Title 29 General Welfare Ordinance – Code of Laws**

WHEREAS, the Shoalwater Bay Tribe is a federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and,


WHEREAS, the Shoalwater Bay Tribal Council is the governing body of the Tribe in accordance with the Constitution of the Shoalwater Bay Indian Tribe; and,

WHEREAS, the Shoalwater Bay Indian Tribe supports enactment of the General Welfare Code, now


THEREFORE BE IT RESOLVED, that the Shoalwater Bay Tribal Council does hereby approve this Resolution to be attached to the Code of Laws – Title 29 – General Welfare Ordinance.

### CERTIFICATION

The Shoalwater Bay Tribal Council, on the 3rd day of October, 2014, enacted the above Resolution, by a vote of 5 for, 0 against, 0 abstain, and 0 absent, under authority contained in Article VI of the Constitution of the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation.

  
\_\_\_\_\_  
Douglas M. Davis, Chairperson  
Shoalwater Bay Indian Tribe

ATTEST:

  
\_\_\_\_\_  
Lynn Clark, Secretary  
Shoalwater Bay Indian Tribe