

COQUILLE INDIAN TRIBAL CODE

Chapter 163

General Welfare Ordinance

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163.010 General

This Ordinance shall be known as the Coquille Indian Tribe General Welfare Ordinance.

(1) Purpose – The first purpose of this Ordinance is to memorialize the procedures used by the 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 sewer, water, electrical service / power, infrastructure, housing, public sanitation services, public education and other such functions that support the long 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 in ensuring compliance with the general welfare doctrine.

(2) Background and Intent - The Coquille Indian Tribe ("Tribe") is a federally recognized Indian Tribe. The Constitution of the Tribe confirms the sovereign duty and responsibility of the Coquille Indian 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 under the Internal Revenue Service' General Welfare Doctrine:

(a) The Internal Revenue Service, 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 needs, cultural preservation and financial assistance to Tribal members consistent with the Tribal Constitution, and desires to affirm its sovereign right to do so 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 provides 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 behalf of a Beneficiary pursuant to this Ordinance.

(c) “**Beneficiary**” means the person or persons entitled to receive

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welfare assistance payments or services 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 Coquille Indian Tribe.
- (f) “**General Welfare Doctrine**” means the doctrine, as recognized by the Internal Revenue Service, 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 needs 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 and financial assistance to Tribal members consistent with the Constitution, sewer, water, infrastructure, housing, public sanitation services, electrical service / power, public education and other such functions to support the long historical and cultural general welfare of the Tribe; and (3) in no event, will General Welfare Doctrine payments be made as per capita distributions of net revenues from a Class II or II gaming operation or as compensation for services.
- (g) “**Ordinance**” means the General Welfare Ordinance.
- (h) “**Tribal Council**” means the Coquille Indian Tribal Council.

163.100 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 doctrine compliance. Programs and services referred to herein must be authorized by independent action of the Council or its designees.

163.110 General Welfare Doctrine The Internal Revenue Service 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

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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.

163.120 Non-Resource Designation. General welfare services and payments hereunder 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 a 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 the Tribal member.

163.130 Federal Trust Obligations; Executive Orders. 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.

163.200 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 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, shelter, education, 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 and the 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 Coquille Indian Tribe. Each Approved Program shall set forth the specific eligibility rules and limitations applied to that program. 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 in accordance with this Section.

163.300 Determination of Needs Based Programs

- (1) Needs Basis. All Assistance disbursed pursuant to this Ordinance shall be needs based.
- (2) Tribal 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 Coquille Indian Tribe, shall retain ultimate authority in establishing minimum standards of living within the Coquille Indian Tribe. In doing so, the Tribal Council may take into account such issues as the number of dependents in a household, the level of household income, and household expenditures, the average and median Tribe incomes, traditional and cultural values and financial matters unique to the Coquille Indian 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 guidelines, and programs with limited funding may need to implement 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 Census Bureau or other federal agencies and adjusted annually.
- (3) Tribal 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

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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, and 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 and 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 make up for federal program underfunding, which shall be treated as satisfying an overall need of the Tribe on a non-taxable basis 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.

163.400 Limitation on Payments; Annual Budgeting

(1) Limitations on 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 the 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.

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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.

163.500 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 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.

163.800 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 Coquille Indian Tribe.

163.900 Severability

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

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History of Amendments to Chapter 163 General Welfare Ordinance:

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