

TRIBAL ADMINISTRATION

1.4.40 Tribal Administration; General Manager

(a) The Tribal Council is ultimately responsible for all Tribal operations. Due to the wide range of government functions under the Tribal Council's authority, the Tribal Council has delegated certain executive functions to the Tribal Administration. The Tribal Administration plans and provides Tribal programs and services, and implements and enforces Tribal laws, subject to the Tribal Council's direction and oversight.

(b) The Tribal Council has delegated responsibility for the overall management of the Tribal Administration to the Tribe's GM.

(c) The Tribal Council is responsible for hiring and managing the GM. The GM reports to and serves at the pleasure of the Tribal Council.

(1) During the GM hiring process, the Tribal Council must evaluate candidates using a point rating system, in which the highest and lowest points must be disregarded. The Tribal Council must offer the position to the candidate with the highest overall score. If the two top candidates have equal scores, the Tribal Council must vote, by a show of hands, on which candidate should be offered the position.

(2) If the chosen candidate declines the position, the Tribal Council may offer the position to the candidate with the next highest score, or may re-open the hiring process.

(d) The Tribal Council may hire or designate an assistant GM, who shall have the authority to act in the absence of the GM.

(e) The Tribal Council must maintain an open line of communication with the GM, particularly on issues of a programmatic or policy nature.

(1) Tribal Council members may address program concerns with the GM, but may not directly manage Tribal employees, except as set forth in Section 1.4.6(b) of this Chapter.

(2) The Tribal Council must consult with the GM prior to appointing Tribal employees to Tribal committees, boards, and other subordinate organizations.

1.4.41 Tribal Employees; Independent Contractors

(a) Tribal employees shall be hired, managed, supervised, evaluated, and terminated by the GM or his or her designee, in accordance with the Tribe's employment policies.

(b) A Tribal employee may perform work only for the official purpose for which he or she has been hired, unless an agreement between the Tribe and the employee is reached regarding different or additional duties.

- (c) Tribal employees must notify the Tribal Council Chair or GM of all inquiries from the public media. Employees may not speak to the public media on behalf of the Tribe without express, prior authorization from the Tribal Council or GM.
- (d) The GM or his or her designee is responsible for hiring and managing all independent contractors performing work for the Tribe, unless the contractor has been engaged to work directly for the Tribal Council or another Tribal entity.
- (e) No person may be employed with public funds if he or she does not perform duties commensurate with his or her compensation.

1.4.42 Policies and Procedure Manuals

Policies and procedure manuals set forth rules, practices, and procedures to guide the Tribal Administration's day-to-day operations. Policies and procedure manuals may include forms and information to promote efficient operations.

- (a) All policies and procure manuals must be approved by the Tribal Council. Policies and procedure manuals adopted pursuant to this Section have the force of law.
- (b) The Tribal Council must publish notice of the approval of any new or revised policy or procedure manual in the Tribal newsletter.
- (c) Copies of all approved policies and procedure manuals must be maintained and available for review at the Tribal Administration Office.

COMMUNITY COMPLAINT PROCESS

1.4.43 Complaints about a Tribal Employee or a Policy or Practice of a Tribal Department (Administrative Complaints)

Complaints about a Tribal employee or a policy or practice of a Tribal Department (administrative complaints) will be addressed only if the following procedures are followed:

- (a) Step 1: Community members receiving Tribal services are encouraged to first attempt to resolve problems, informally, with the Tribal staff involved.
- (b) Step 2: If a problem cannot be resolved informally, a written complaint may be submitted.
 - (1) The Administrative Complaint Form included in Appendix D may be used, but is not required. A written complaint must:

(A) Describe the problem, including all relevant facts and a copy of any relevant documents;

(B) Explain the remedy being requested; and

(C) Provide contact information for, and be signed by, the person making the complaint. No anonymous complaints will be addressed.

(2) Complaints may be submitted in person, or by mail, email, or fax, as follows:

(A) Complaints about a Tribal employee: to the employee's supervisor.

(B) Complaints about a policy or practice of a Tribal Department: to the Department Director.

(C) Complaints about a Department Director: to the GM.

(3) If a person cannot submit a written complaint, the supervisor, Department Director, or GM may accept a verbal complaint, if he or she documents the complaint in writing, and the person making the complaint signs the document.

(4) Upon receipt of a complaint, the supervisor, Department Director, or GM may meet with the person making the complaint and/or other individuals to discuss the complaint, but a meeting is not required.

(5) The supervisor, Department Director, or GM must respond to all complaints within ten (10) business days. The response may be provided in person or by mail, email, or fax. If the response is provided in person or by phone, the supervisor, Department Director, or GM must document the date and time of the meeting or call and the topics discussed.

(c) Step 3: If the person making the complaint is not satisfied with the decision of the supervisor or Department Director, he or she may submit the complaint to the GM.

(1) The following information must be submitted to the GM:

(A) A copy of the complaint;

(B) A copy of the supervisor or Director's decision (if the decision was in writing) or a written description of the decision (if the decision was not in writing); and

(C) A statement explaining why the person is not satisfied with the decision.

(2) The GM will not consider complaints unless this complaint process has been followed.

(3) The GM must respond to all complaints received, in writing, within 10 business days.

(d) Step 4: If the person making the complaint is not satisfied with the GM's decision or the complaint is about the GM, the complaint may be submitted to the Tribal Council. The complaint must be submitted to the Tribal Council in writing, and must include:

(1) A copy of the initial complaint, the initial decision, and the GM's decision, and a statement explaining why the person is not satisfied with the GM's decision; or

(2) If the complaint is about the GM:

(A) A description of the complaint about the GM, including all relevant facts and documents;

(B) A description of the remedy being requested; and

(C) Contact information for and the signature of the person making the complaint. No anonymous complaints will be addressed.

(e) Upon receipt of a complaint submitted in accordance with this Section, the Tribal Council shall add the issue to the agenda for the next Tribal Council meeting, and shall invite the person making the complaint to attend the meeting; *provided that* if the agenda for the next Tribal Council meeting is full, the Chair may place a non-urgent complaint on the agenda for the following meeting.

1.4.44 Submitting Complaints to the Tribal Council

The Tribal Council will not consider complaints about a Tribal employee or Department unless the administrative complaint process set forth in Section 1.4.43 of this Chapter has been followed. Other types of complaints may be presented to the Tribal Council, in writing or in person, as follows:

(a) Written complaints may be submitted to the Tribal Council by mail, email, fax, or in person. The Tribal Council Complaint Form included in Appendix E may be used, but is not required. A written complaint must:

(1) Describe the complaint / problem / alleged violation, including a description of all relevant facts and a copy of any relevant documents;

(2) Explain the remedy being requested; and

(3) Provide contact information for, and be signed by, the person making the complaint. No anonymous complaints will be addressed.

(b) To present a complaint to the Tribal Council in person, the person making the complaint must ask the Tribal Council Chair to be added to the Tribal Council agenda. The person making the complaint is encouraged to provide the Tribal Council with a

copy of all relevant documents prior to the Tribal Council meeting at which the Tribal Council will consider the complaint.

(c) Upon receipt of a complaint submitted in accordance with this Section, the Tribal Council shall add the issue to the agenda for the next Tribal Council meeting, and shall invite the person making the complaint to attend the meeting; *provided that* if the agenda for the next Tribal Council meeting is full, the Chair may place a non-urgent complaint on the agenda for the following meeting.

1.4.45 Resolution of Complaints by the Tribal Council

After reviewing a complaint submitted in accordance with this Chapter, the Tribal Council may choose to:

- (a) Seek additional information from the person making the complaint and/or schedule a meeting with the person making the complaint;
- (b) Consult with other persons or entities;
- (c) Go into Executive Session to discuss the matter further;
- (d) Table the issue for further discussion at a later date;
- (e) Find that no Tribal Council action is needed to resolve the complaint; and/or
- (f) Take any other action within the power of the Tribal Council.

TRIBAL JUDICIARY

1.4.46 Exercise of Judicial Authority

The Burns Paiute Tribal Court is vested with the power and authority to exercise all judicial authority of the Tribe and power to perform all judicial and court functions. Rules and procedures governing the Tribal Court, including but not limited to qualifications for judges, are set forth in the Burns Paiute Tribal Code.

SOVEREIGN IMMUNITY

1.4.47 Immunity of the Burns Paiute Tribe

The Burns Paiute Tribe is immune from suit, except to the extent that the Tribal Council has expressly waived sovereign immunity or applicable federal law has limited sovereignty immunity. The Tribe's sovereign immunity exists both on and off reservation, and extends to the Tribe itself, to agencies, arms, entities, and enterprises of the Tribe, and to Tribal employees, officers, and agents within the scope of their duties or authority.

1.4.48 Waiver of Sovereign Immunity

Recognition and preservation of the Tribe's sovereign immunity is vital to the Tribe. In some cases, it may be in the Tribe's best interest to approve a limited waiver of sovereign immunity to give companies, governments, and other entities who contract with the Tribe the right to exercise contractual remedies. Waiver of the Tribe's sovereign immunity for such specific transactions is an exercise of the Tribe's sovereignty. The sovereign immunity of the Burns Paiute Tribe may be waived only as follows:

- (a) Waivers of sovereign immunity by Tribal Council resolution may be granted only when necessary to secure a substantial advantage or benefit for the Tribe.
- (b) The Burns Paiute Tribal Council retains the exclusive authority to waive the Tribe's sovereign immunity, including the immunity extended to Tribal agencies, arms, entities, and enterprises, and to Tribal employees, officers, and agents.
- (c) Any waiver of the Tribe's sovereign immunity must be expressly, knowingly, and specifically authorized in the Tribal Code or by Tribal Council resolution. The actual waiver of sovereign immunity, and its limits, must be set forth with specificity in the contract or agreement waiving immunity.
- (d) Any Tribal Council resolution approving a waiver of sovereign immunity must:
 - (1) Include the specific details of the waiver; or
 - (2) Refer to the contract or agreement containing the approved waiver of sovereign immunity, with the contract or agreement attached to the resolution.
- (e) Any waiver of the Tribe's sovereign immunity shall be a "limited" waiver, unless otherwise specifically permitted by the Tribal Code or Tribal Council resolution. For purposes of this Section, "limited" means that each waiver of sovereign immunity shall be specific and limited as to duration, grantee, transaction, property or funds of the Tribe subject to the waiver, court having jurisdiction, and applicable law.
 - (1) The Tribe may waive sovereign immunity only in favor of the Burns Paiute Tribal Court, unless another forum is specifically named in the contract or agreement containing the waiver and authorized in the Tribal Code or Tribal Council resolution approving the waiver.
 - (2) No waiver of sovereign immunity may allow for punitive or non-economic damages. Attorney fees, costs, and expenses may be included in a waiver of sovereign immunity only if specifically authorized in the contract or agreement containing the waiver, and included in the Tribal Code or Tribal Council resolution approving the waiver.

(3) No express waiver of sovereign immunity shall be deemed a consent to the levy of any judgment, lien, or attachment upon property of the Tribe other than the property specifically pledged, assigned, or identified in the waiver.

(f) The Tribe's sovereign immunity shall not be waived in favor of any third party. Any waiver of the Tribe's sovereign immunity does not confer any benefits or rights on any third party, except as may be specifically set out in the contract or agreement waiving sovereign immunity and in the Tribal Code or Tribal Council resolution approving the waiver.

(g) Any action or suit commenced under an approved waiver of sovereign immunity may only be brought against the Tribe or a Tribal agency, arm, entity, or enterprise. No action or suit may be brought against Tribal employees, officers, and agents, in their individual capacity, for actions taken within the scope of their authority or official duties.

(h) Nothing in this Chapter may be construed to have waived the sovereign immunity of the Tribe, any Tribal entity, department, or program, or any Tribal official, director, manager, or employee.

1.4.49 Waiver of Tribal Sovereign Immunity: Forum

(a) No suit or action shall be allowed or maintained against the Tribe, in any forum, whether tribal, state, or federal, except as may be specifically authorized in accordance with the specific terms and provisions of a waiver of sovereign immunity granted in accordance with this Chapter.

(b) Despite any provision to the contrary, unless a contract or agreement expressly prohibits Tribal Court jurisdiction for the resolution of any matter arising under the contract or agreement, the Tribal Court shall have jurisdiction to determine whether the Tribe has validly waived its sovereign immunity in any contract or agreement.

APPENDIX A: LEGISLATIVE HISTORY

Article V, Section 10(a) of the Burns Paiute Tribal Constitution requires the Tribal Council to establish its own rules of procedure.

In 2000, the Tribal Council obtained community input for the Tribe's Strategic Plan 2002–2007. The Strategic Plan outlined the community's vision and strategic goals for achieving greater social and economic self-sufficiency. In the area of governance, the community identified the need for:

- Uniform policies and procedures for the Tribal Council; and
- Rules and procedures for the Tribal government, to set forth the functions of the Tribal government and support greater efficiency and productivity in the governance of Tribal programs and resources.

In 2003, the Tribe applied for a financial assistance from the Administration of Native Americans to fund the development of several Tribal codes, including a Tribal Council Policy and Procedures Code and a Tribal Government Organization and Procedures Code. The Tribe adopted these laws in 2005 and 2006.

On July 11, 2006, the Tribal Council amended the Tribal Council Policy and Procedures Code / Burns Paiute Tribal Council Ordinance (now called the "Tribal Council Policies & Procedures"), through Resolution 2006-09.

In September 2006, the Tribal Council approved amendment of the Tribal Council Policies & Procedures "in concept," to strengthen the Tribe's drug and alcohol testing policies for Tribal Council members and remove other inapplicable provisions.

To simplify the policies and procedures governing the Tribal Council and the other units of the Tribal government, the Tribal Council consolidated the Tribal Council Policies & Procedures and the Government Organization and Procedure Ordinance into one document, known as the Tribal Government Ordinance ("TGO"). The Tribal Council adopted the TGO on August 29, 2007.

In 2009, through Tribal Council Resolution 2009-18, the Tribal Council amended the TGO to delete section of (B)(3)(d), which had prohibited Tribal Council members from participating in any official Tribal Council action or discussion that involves any corporation, foundation, or other entity in which the Tribal Council member is a trustee, director, board member, or officer. The Tribal Council approved additional amendments to the TGO in 2010.

The Tribal Council initiated an extensive review and revision of the TGO in 2016. Revisions included but were not limited to:

- Adding a definitions section;

- Deleting the bar on Tribal employees serving on the Tribal Council;
- Clarifying Tribal Council officer responsibilities and meeting procedures;
- Adding the community complaint process adopted by the Tribal Council in 2010;
- Adding more detailed requirements for committees and boards, to promote consistent rules and procedures for all committee and boards;
- Adding more detailed requirements for waiving the Tribe's sovereign immunity; and

Other revisions attempted to simplify and clarify the rules and procedures applicable to the Tribal government. In addition, the TGO was re-numbered and re-formatted, and became Chapter 1.4 of the Tribal Code.

The Tribal Council adopted the new Chapter 1.4 of the Tribal Code on April 13, 2017, through Tribal Council Resolution 2017-15.

APPENDIX B: CODE OF ETHICS

The following Code of Ethics applies to Tribal Council members, as well as members of Tribal committees, boards, and other subordinate organizations (collectively referred to herein as “Tribal officers”):

(a) Tribal officers must uphold the Tribal Constitution and obey all Tribal laws, regulations, and policies.

(b) Tribal officers must serve as positive role models for the Tribal community, and act in a professional and ethical manner, which reflects positively upon the Tribe.

(c) Tribal officers must act in the best interest of the Tribe, not their personal interests, and must maintain an impartial decision-making attitude, keeping personal and family interests separate from Tribal affairs.

(1) When a conflict of interest exists for an officer with regard to a particular issue, the officer may not participate in any official discussion or action related to matter.

(2) No Tribal officer may participate in any decision that is likely to result in a financial benefit or advantage for the representative or his or her immediate family member.

(3) No Tribal Council member who is employed by the Tribe or by a Tribal entity may participate in any decision involving his or her department or entity. Tribal Council members who are employed by the Tribe may not participate in any decision involving the discipline or termination of the Tribe’s GM.

(4) A Tribal officer may not accept any gifts related to the performance of his or her official duties, unless he or she discloses the gift to the Tribal Council, and the Tribal Council approves acceptance of the gift.

(d) The Tribal Constitution gives Tribal members various rights, including the right to sign petitions. When exercising such rights, Tribal officers must always be mindful of their positions of influence within the community.

(1) To avoid undue influence, a Tribal officer signing a petition or taking other action as an individual Tribal member is strongly encouraged to disclose that he or she is acting in an individual capacity—not as a Tribal officer or on behalf of the Tribe.

(2) Tribal Council members have a duty to publicly support all Tribal Council decisions, and may not sign petitions or take other action in opposition to officially-approved Tribal Council action.

(e) Tribal officers are expected to exercise the utmost discretion in matters of Tribal business, and must not disclose confidential information or documents, except as necessary for an official purpose.

(f) Tribal officers may use Tribal property, equipment, and supplies only as authorized, for official purposes. Tribal officers must properly protect and use Tribal property, equipment, and supplies, and must make every effort to return any property, equipment, and supplies in the same condition as it was received.

(g) Meeting minutes, files, keys, and other Tribal property used by Tribal officers remains the property of the Tribe, unless otherwise documented.

(1) When a Tribal Council member leaves office, he or she must return all Tribal property to a Tribal Council officer within 72 hours.

(2) When a Tribal Board or Committee member leaves office, he or she must return all Tribal property to a seated Board or Committee member within 72 hours. If there are no seated Board or Committee members, the property must be returned to a Tribal Council officer.

APPENDIX C: TRIBAL COUNCIL RESOLUTION FORMAT



Burns Paiute Tribe

100 Pasigo St
Burns, OR 97720
Phone: (541) 573-1910
Fax: (541) 573-2312

BURNS PAIUTE TRIBE
Burns Paiute Tribal Council

RESOLUTION NO: 20 ____ - ____

[Title]

WHEREAS, the Burns Paiute Tribe (“Tribe”) is a federally recognized Indian Tribe and has adopted a Tribal Constitution (“Constitution”) designating the Burns Paiute Tribal Council (“Council”) as the elected governing body of the Tribe; and

WHEREAS, Article ____ of the Constitution authorizes the Council to *[describe authority]*; and

WHEREAS, *[describe issue, goal, action, decision, etc.]*; and

WHEREAS, *[describe issue, goal, action, decision, etc.]*; and

WHEREAS, *[describe issue, goal, action, decision, etc.]*.

NOW THEREFORE BE IT RESOLVED that *[describe action or decision]*.

NOW BE IT FURTHER RESOLVED that *[if needed]*

CERTIFICATION

We, the undersigned Chairperson and Secretary-Treasurer of the Burns Paiute Tribal Council, do hereby certify that: the Council is composed of seven (7) members, of whom five (5) constitute a quorum; that a quorum was present at a meeting thereof duly and regularly called, noticed, convened, and held on this ____th day of _____, 20____; and that the foregoing Resolution was duly adopted by ____ affirmative votes, with ____ opposing, and ____ abstaining. The Chairperson’s vote is not required except in the case of a tie.

Tribal Council Chairperson
[Name]

ATTEST: Secretary-Treasurer
[Name]

Date: _____

Date: _____

APPENDIX D: ADMINISTRATIVE COMPLAINT FORM

ADMINISTRATIVE COMPLAINT FORM – BURNS PAIUTE TRIBE

This form may be used to submit a complaint about a Tribal employee or a complaint about a policy or practice of a Tribal Department.

Name of person submitting complaint: _____

Contact information (phone/email): _____

If your complaint is about a Tribal employee, please provide the employee's name. If your complaint is about a Department policy or practice, please provide the name of the Department and a brief description of the policy or practice:

Please describe the problem, including a description of all relevant facts:

Please attach a copy of any relevant documents.

Please explain how you would like this problem to be resolved (the remedy):

SIGNATURE REQUIRED:

Signature of person submitting complaint

Date submitted

Complaints may be submitted in person, or by mail, email, or fax, as follows:

- Complaints about a Tribal employee: to the employee's supervisor.
- Complaints about a policy or practice of a Tribal Department: to Department Director.
- Complaints about a Department Director: to the GM.

For Office Use Only

Received by: _____

Date: _____

Notes:

Adopted by the Burns Paiute Tribal Council on August 29, 2007

Revised by the Burns Paiute Tribal Council on April 13, 2017 through Resolution No. 2017-15

APPENDIX E: TRIBAL COUNCIL COMPLAINT FORM

TRIBAL COUNCIL COMPLAINT FORM – BURNS PAIUTE TRIBE

** The Tribal Council will not consider complaints about a Tribal employee or Department unless the administrative complaint process (Section 1.4.45 of the Tribal Code) has been completed. This form may be used to submit other complaints to the Tribal Council.*

** Complaints may be submitted to the Tribal Council in person, or by mail, email, or fax.*

Name of person submitting complaint: _____

Contact information (phone/email): _____

Please describe the complaint / problem / alleged violation, including all relevant facts:

Please attach a copy of any relevant documents.

Please explain how you would like this problem to be resolved (the remedy):

SIGNATURE REQUIRED:

Signature of person submitting complaint

Date submitted

For Office Use Only:

Received by: _____

Date: _____

Notes:

Adopted by the Burns Paiute Tribal Council on August 29, 2007

Revised by the Burns Paiute Tribal Council on April 13, 2017 through Resolution No. 2017-15

