

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA INDIAN RESERVATION
HOOPA, CALIFORNIA

ORDINANCE NO: 07-98

DATE APPROVED: JUNE 8, 1998

SUBJECT: APPROVAL OF THE TRIBAL NON-PROFIT CORPORATIONS CODE,
TITLE 54 OF THE HOOPA TRIBAL CODE.

WHEREAS: The Hoopa Valley Tribe did on June 20, 1972, adopt a Constitution and Bylaws which was approved by the Commissioner of Indian Affairs on August 18, 1972, ratified by Act of Congress on October 31, 1988, and amended on June 19, 1990 and, by tribal law, the sovereign authority of the Tribe over the matter described herein is delegated to the Hoopa Valley Tribal Council, acting by law, and

WHEREAS: Article IX of the Constitution authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances to regulate the conduct of commerce within the Tribe's jurisdiction, and

WHEREAS: The Tribal Council has identified business development and job creation as major goals for the Tribe, and that said goals are consistent with the Tribe's priorities of maintaining a strong, self-governing and stable society.

NOW THEREFORE BE IT RESOLVED: The Hoopa Valley Tribal Council hereby enacts the Tribal Non-Profit Corporations Code as Title 54 of the Hoopa Tribal Code.

TITLE 54 -- NON-PROFIT CORPORATIONS
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TITLE 54 - NON-PROFIT CORPORATIONS

PART I: FORMATION

54.101. Scope of Title

(a) Unless otherwise provided, the provisions of this Title apply to all non-profit corporations formed under the sovereign powers of the Tribe, except those corporations which are controlled by the Tribal Council.

(b) Any non-profit corporation that is pre-existing as of the date

of enactment of this Code is not effected by this and other Title, unless such business elects to utilize the provisions of the Code.

- (c) Any non-profit corporation that elects not to utilize the Tribal Comprehensive Business Codes shall not be entitled to any of its protections and benefits except as may be directed by the Tribal Council on a case-by-case basis.
- (d) Unless otherwise agreed, the provisions of this Title shall not apply to any non-profit organization, entity, club, or otherwise, or any individual whose annual proceeds are \$5,000.00 or less.
- (e) Nothing in this section may be construed as a waiver of sovereign authority over any business activities within the Tribe's jurisdiction when the exercise of Tribal powers is necessary to safeguard and promote the peace, safety, morals, and general welfare of the Tribe and Reservation as prescribed by law.

54-102. Definition of Terms Used in this Title

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In this Title:

- (a) "Corporation" means a non-profit corporation formed under the sovereign powers of the Tribe, except for those corporations controlled by the Tribal Council;
- (b) "Director" means a member of a group elected or otherwise authorized to govern the affairs of the corporation, and includes trustees, governors, regents, and other terms of like import;
- (c) "Member" means (without regard to what a person is called in the articles or bylaws) any person who on more than one occasion, pursuant to a provision of a corporation's articles or bylaws, has the right to vote for the election of a director or directors. A person is not a member solely by virtue of any of the following:
 - (1) any rights such person has as a member of the staff or student body of any school or college to vote for a director;
 - (2) any rights such person has to designate a director or directors; or
 - (3) any rights such person has as a director.
- (d) "Mutual Benefit Corporation" means any corporation, including any non-profit cooperative, which is not a public benefit

corporation."

(e) "Public Benefit Corporation" means:

- (1) any corporation which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, -or any successor section;
- (2) any corporation, unless its articles or incorporation provide that it is a mutual benefit corporation, which is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals; or
- (3) any corporation organized primarily for a public purpose and which is designated in its articles of incorporation as a public benefit corporation.

54-103. Purposes and Powers of Non-Profit Corporations

- (a) Every corporation incorporated under the sovereign powers of the Tribe has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including without limitation power:

- (1) to sue and be sued, complain and defend in its corporate name.
- (2) to have a corporate seal, which may be altered at will, and-to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Tribe, for managing and regulating the affairs of the corporation;
- (4) to purchase, receive, lease, or acquire, whether by gift, devise, bequest or otherwise, and to own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

- (5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) to make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;
- (8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by Section 54.104 of this Title;
- (9) to be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;
- (10) to conduct its business, locate offices, and exercise the powers granted by this Chapter within or without the Reservation and the State of California;
- (11) to elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;
- (12) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (13) to make donations for public welfare or for charitable, scientific, or educational purposes and for the purposes not inconsistent with law, that further the corporate interest;
- (14) to impose dues, assessments, admission and transfer fees upon its members;
- (15) to establish conditions for admission to membership, admit members and issue memberships;
- (16) to carry on a business;

- (17) to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation;
- (18) to cease its corporate activities and surrender its corporate franchise.

54.104. Limitations.

(a) A corporation:

- (1) shall not have or issue shares of stock;
- (2) shall not pay dividends or make any disbursement of income to its members, directors or officers;
- (3) shall not loan money or credit to its officers or directors;
- (4) may pay compensation only up to a reasonable amount to its members, directors, officers or agents for services rendered; and
- (5) may confer benefits upon its members only in conformity with its purposes.

(b) A mutual benefit corporation, unless its articles of incorporation or bylaws provide otherwise:

- (1) upon dissolution or final liquidation may make distributions to its members as permitted by this Title, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income; and
- (2) may periodically pay refunds to members for fees or dues actually paid which are in excess of the losses, expenses and debts of the corporation, and such refunds shall not be deemed to be dividends or distributions of income.

(c) A public benefit corporation shall, upon dissolution, have its assets distributed for one or more purposes listed in the definition of "Public Benefit Corporation" contained in Section 54.102 of this Title, or to the federal government, or to a state, tribe or other local government, for a public purpose, or shall be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

54-105. Limitations on Private Foundations.

A corporation which is a private foundation as defined in Section 509(a) of the Internal Revenue Code of 1954:

- (a) Shall distribute such amounts for each taxable year at such time and in such manner as to avoid subjecting the corporation to tax under Section 4942 of the Code;
- (b) Shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code;
- (c) Shall not retain any excess business holdings as defined in Section 4943(c) of the Code;
- (d) Shall not make any taxable expenditures as defined in Section 4944 of the Code;
- (e) Shall not make any taxable expenditures as defined in Section 4945(d) of the Code;

All references in this section to sections of the Code shall be to such sections of the Internal Revenue Code of 1954 as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

54.106. Defense of Ultra Vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

- (1) In a proceeding by a member or director against the doing of any act or acts or the transfer of real or personal property by or to the corporation. If any unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

- (2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or directors of the corporation.
- (3) In a proceeding by the Director of Commerce, as provided in this Chapter, to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

54.107. Articles Of Incorporation.

(a) Articles of incorporation shall set forth:

- (1) a corporate name for the corporation that satisfies the requirements of this Title;
- (2) One of the following statements:
 - (i) This corporation is a public benefit corporation.
 - (ii) This corporation is a mutual benefit corporation.
- (3) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
- (4) the names and addresses of the individuals who are to serve as the initial directors;
- (5) the street address of the corporation's initial registered office and the name of its initial registered agent at that office;
- (6) the name and address of each incorporator;
- (7) whether or not the corporation will have members; and
- (8) provisions not inconsistent with law regarding the distribution of assets on dissolution.

(b) The articles of incorporation may set forth:

- (1) provisions not inconsistent with law regarding:
 - (i) managing and regulating the affairs of the corporation;
 - (ii) defining, limiting, and regulating the powers of the corporation, its board of directors, and

members (or any class of members); and

(iii) the characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.

(2) any provision that under this Title is required or permitted to be set forth in the bylaws.

(c) Each incorporator and director named in the articles must sign the articles.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in this Title.

54.108. Filing of Articles of Incorporation.

Duplicate originals of the articles of incorporation shall be delivered to the Director of Corporations. If the Director of Corporations finds that the articles of incorporation he or she shall, when all the fees have been paid as in this Title described:

(1) Endorse on each of such originals the word "Filed," and the effective date of the filing thereof.

(2) File one of such originals.

(3) Issue a certificate of incorporation to which the other original shall be affixed.

The certificate of incorporation together with the original of the articles of incorporation affixed thereto shall be returned to the incorporators or their representative.

54-109. Effect of Filing the Articles of Incorporation -- Certificate of Incorporation.

Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Title, except as against the Tribe in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

54-110. Organization Meeting of Directors.

After the issuance of the certificate of incorporation, an organization meeting, of the board of directors named in the

articles of incorporation shall be held at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers, and transacting such other business as may come before the meeting. Unless all directors waive notice, the directors calling the meeting shall give at least three days' notice thereof by mail to each director, which notice shall state the time and place of meeting. Any action permitted to be taken at the organization meeting of the directors may be taken without a meeting, if each director signs an instrument which states the action so taken.

PART II: MEMBERS.

54.111. Admission of Members.

- (a) A corporation is not required to have members.
- (b) A corporation may admit any person as a member. The articles or bylaws shall establish criteria or procedures for admission; provided, however, that no person shall be admitted as a member without his or her consent.
- (c) Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

54-112. Differences in Rights and Obligations of Members.

All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. Members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

54.113. Transfers.

- (a) Except as set forth in or authorized by the articles or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom.
- (b) No member of a public benefit corporation may transfer a membership or any right arising therefrom.
- (c) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

54.114. Resignation.

- (a) A member may resign at any time.
- (b) The resignation of a member does not relieve the member from any previously accrued obligations the member may have to the corporation.

54-115. Termination.

- (a) No member may be expelled or suspended, and no membership or memberships may be terminated or suspended except pursuant to a procedure which is fair and reasonable under the circumstances and is carried out in good faith.
- (b) A procedure is fair and reasonable when it provides for written notice to the member of the reasons for the proposed expulsion, suspension or termination, and provides a reasonable opportunity for the member to be heard by the person or persons authorized to decide the matter prior to the proposed action.
- (c) A procedure which departs from any procedures set forth in the corporate bylaws for the expulsion, termination or suspension of members or membership rights is not fair and reasonable, unless special circumstances warrant such a departure.
- (d) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension or termination.

54.116. Purchase of Memberships.

- (a) A public benefit corporation may not purchase any of its memberships or any right arising therefrom.
- (b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws.
- (c) A mutual benefit corporation shall not purchase its memberships unless after the purchase is completed:
 - (1) the corporation would be able to pay its debts as they become due in the usual course of its activities; and
 - (2) the corporation's total assets would at least equal the sum of its total liabilities.

54.117. Annual Meeting of Members.

A corporation with members shall establish in its articles of incorporation or by-laws a date at which an annual meeting of members shall be held, if called, and if not so established, the date shall be the second business day after May 31st. Unless otherwise provided in the articles of incorporation, no annual meeting need be held unless a written request therefor is delivered to the corporation by any voting member not less than 30 days before the date specified for the meeting.

54-118. Special Meetings of Members.

(a) A corporation shall hold a special meeting, of members:

(1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) if at least 10 percent of all the members entitled to vote on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation's secretary one or more written demands for the meeting, describing the purposes for which it is to be held.

(b) Special meetings of members may be held on or off of the Reservation, at the place stated in accordance with the bylaws. If no place is stated in the bylaws, special meetings shall be held at the corporation's principal office.

(c) Only business within the purposes described in the notice sent to members may be conducted at a special meeting of members.

54.119. Notice of Members' Meetings.

(a) A corporation shall notify its members of the date, time and place of each annual and special meeting of members no fewer than 15 nor more than 60 days before the meeting. Unless this Title or the articles of incorporation require otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.

(b) Notice of members' meetings shall be given by mail or telephone, using the most recent address or telephone number supplied to the corporation by each member; provided, however, that if it is consistent with the corporation's articles or bylaws, notice may be given by posting and publishing notices instead of mailing or telephoning if the directors determine in good faith that notice so given is reasonably calculated to actually inform all voting members of the meeting.

- (c) If annual or special members' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if that information is announced before meeting adjournment.

54-120. Waiver of Notice.

- (a) A member may waive any notice required by this Title, the articles, or bylaws before or after the date and time stated in the notice. Except as provided in subsection (b) below, the waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

- (b) A member's attendance at a meeting:

- (1) waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

- (2) waives objection to consideration of a particular matter at the meeting, that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

54-121. Action by Written Ballot.

Unless prohibited or limited by the articles or bylaws, any action which may be taken at any annual or special meeting of members may be taken by a vote without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

54-122. Voting Rights of Members in General.

- (a) Each member shall have no more than one vote with respect to any matter he or she is entitled to vote upon according to the corporation's bylaws or articles.
- (b) Cumulative voting for directors shall not be allowed unless provided for in the corporation's bylaws or articles.
- (c) The bylaws or articles of a corporation may provide for any reasonable method to fill individual positions on its board of directors, including but not limited to: voting by all members; voting among members living in a particular community; voting among any other class of members; appointment by the Tribal Council or any other person or entity; and voting among persons who are not considered "members" under Section 54.102 of this Title.

54-123. Inspection of Corporate Records.

(a) A corporation shall keep at least the following records:

- (1) minutes of all members' meetings and board of director's meetings and actions of members or of the board of directors without a meeting;
- (2) appropriate accounting records;
- (3) detailed records of the use of any money donated to a public benefit corporation;
- (4) names and addresses of all members and the class of voting rights held by each;
- (5) current articles of incorporation and bylaws;
- (6) resolutions adopted by the board of directors.

(b) Upon five days written notice, the Director of Commerce or his or her duly authorized representative or a member of the corporation is entitled to inspect and copy the records referred to in subsection (a) above. In the case of inspection by a member, the right is subject to the following requirements:

- (1) the member's demand must be made in good faith and for a proper purpose;
- (2) the member must describe with reasonable particularity his or her purpose and the records he or she desires to inspect; and
- (3) the records must be directly connected with his or her purpose.

(c) the corporation may impose a reasonable charge covering the costs of labor and materials for copies of documents; provided, however, that in the case of copies made for a member, the charge may not exceed any estimates of such costs provided to the member.

(d) A member's agent or attorney has the same inspection and copying, rights as the member he or she represents.

(e) A corporation may take reasonable steps to prevent the dissemination of trade secrets, proprietary information or other commercially-sensitive information to other persons than corporate members or representatives of the Director of Commerce.

54.124. Limitations on use of Membership Lists.

- (a) Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:
- (1) used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
 - (2) used for any commercial purpose; or
 - (3) sold to or purchased by any person.
- (b) This section shall not be construed to limit the use of membership lists by the Director of Commerce or other tribal officials in the course of any official investigation of the operation of a corporation.

PART III. DIRECTORS AND OFFICERS.

54.125. Duties of Board of Directors.

- (a) Except as provided in subsection (b) below, all corporate powers shall be exercised by or under the authority of and the affairs of the corporation managed under the direction of its board of directors.
- (b) The articles may authorize a person or persons to exercise some or all of the powers would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of directors, and the directors shall be relieved to that extent from such duties and responsibilities.

54.126. Qualifications of Directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of the Reservation or a member of the corporation unless the articles of incorporation or bylaws so prescribe. A director shall be an individual who is least 18 years of age.

54.127. Terms of Directors.

- (a) If the corporation has members:

- (1) the terms of the initial directors of a corporation expire at the first members' meeting at which directors are elected; and
 - (2) the terms of all other directors expire at the next annual members' meeting following their election, unless the articles of incorporation provide that their terms are staggered or are longer than one year in duration.
- (b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.
- (c) A decrease in the number of directors does not shorten an incumbent director's term.
- (d) Except as provided in the articles or bylaws:
- (1) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and
 - (2) the term of a director filling any other vacancy expires at the end of the unexpired term which such director is filling.
- (e) Despite the expiration of a director's term he or she continues to serve until a successor is elected or appointed and qualifies or until there is a decrease in the number of directors.

54-128. Removal of Elected Directors.

- (a) The members may vote to remove one or more directors with or without cause.
- (b) If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him or her.
- (c) A director may be removed by the members only at a meeting called for that purpose and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.
- (d) An entire board of directors may be removed under subsections (a)-(c).

- (e) The board of directors of a corporation may, without cause, remove a director who has been elected by the board by the vote of a two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws.
- (f) If at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

54-129. Removal of Designated or Appointed Directors.

- (a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.
- (b) Appointed Directors:
 - (1) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director;
 - (2) The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary;
 - (3) A removal is effective when the notice is effective unless the notice specifies a future effective date.

54-130. Removal of Directors by Judicial Proceeding.

- (a) The Tribal Court may remove a director of the corporation from office in a proceeding commenced by the corporation, or by at least 33 percent of the members or in an action brought on behalf of the Director of Commerce, if the court finds that :
 - (1) the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation or that the director received a loan of the corporation's money or credit; and
 - (2) removal is in the best interest of the corporation.
- (b) If the court removes the director it may bar the director from reelection for a period prescribed by the court.
- (c) If either the corporation's members or the Director of Commerce commences a proceeding under subsection (a), the corporation shall be made a party defendant.

54-131. Vacancy on Board.

- (a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:
- (1) the members, if any, may fill the vacancy if the vacant office was held by a director elected by a specific voting class, only members of the class are entitled to vote to fill the vacancy if it is filled by the members;
 - (2) the board of directors may fill the vacancy; or
 - (3) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.
- (b) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.
- (c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.
- (d) A vacancy that will occur at a specific later date, by reason of a resignation or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

54-132. Meetings.

- (a) The board of directors may hold regular or special meetings off the Reservation.
- (b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of any means of communication by which a directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

54.133. Action Without Meeting.

- (a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Title to be taken at a board of directors' meeting may be taken without a

meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

- (b) Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date.
- (c) A consent signed under this section has the effect of a meeting, vote and may be described as such in any document.

54-134. Notice of Meeting.

- (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held as provided in the bylaws without notice.
- (b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation, bylaws or the provisions of this Title.

54-135. Waiver of Notice.

- (a) A director may waive any notice required by this Title, the articles of incorporation or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.
- (b) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless that director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

54-136. Quorum and Voting.

- (a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of a majority of the number of directors.
- (b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the number of directors.

- (c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.
- (d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) he or she objects at the beginning, of the meeting (or promptly upon his or her arrival) to holding it or transacting business at the meeting; (2) his or her dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

54-137. General Standards for Directors.

- (a) A director shall discharge his or her duties as a director, including duties as a member of a committee:
- (1) in good faith;
 - (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (3) in a manner he or she reasonably believes to be in the best interests of the corporation.
- (b) In discharging his or her duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
- (1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
 - (2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
 - (3) a committee of the board of directors of which he or she is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

- (c) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.
- (d) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property, and notwithstanding that the corporation may be a trustee with respect to the property.
- (e) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of office in compliance with this section.

54-138. Director Conflict of Interest.

- (a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsections (b) or (c).
- (b) A transaction in which a director of a public benefit corporation has a conflict of interest may be approved:
 - (1) in advance by the vote of the board of directors or a committee of the board if:
 - (i) the material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and
 - (ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or
 - (2) before or after it is consummated, by obtaining approval of the:
 - (i) Director of Commerce; or
 - (ii) Tribal Court in an action of which the Director of Commerce is given notice.
- (c) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if-
 - (1) the material facts of the transaction and the director's interest were disclosed or known to the board of

directors or a committee of the board and the board of committee of the board authorized, approved, or ratified the transaction; or

- (2) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.
- (d) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (1) another entity in which he or she has a material financial interest or in which he or she is a general partner is a party to the transaction or (2) another entity of which he or she is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.
 - (e) For purposes of subsections (b) and (c), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsections (b) and (c) if the transaction is otherwise authorized, approved, or ratified as provided in subsections (b) or (c).
 - (f) For purposes of subsection (c)(2), a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (d)(1), may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (c)(2). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this Title. A majority of the voting members, whether or not present, entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

- (g) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

54-139. Liability for Unlawful Payments.

- (a) Unless he or she complies with the applicable standards of conduct described in Section 54.137, a director who votes for or assents to any payment of money by the corporation to a member, officer or director made in violation of Section 104 of this Title or the articles of incorporation is personally liable to the corporation for the amount of the payment that exceeds what could have been distributed without violating this Title or the articles of incorporation.
- (b) A director held liable for an unlawful payment under subsection (a) is entitled to contribution:
- (1) from every other director who voted for or assented to the payment without complying with the applicable standards of conduct described in section 54.137; and
 - (2) from each member, officer or director who received an unlawful payment, for the amount of the unlawful payment, whether or not he or she accepted the payment knowing it was made in violation of this Title or the articles of incorporation.

54-140. Officers.

- (a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.
- (b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.
- (c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.
- (d) The same individual may simultaneously hold more than one office in a corporation.
- (e) Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

54-141. Standards of Conduct for Officers.

- (a) An officer with discretionary authority shall discharge his or her duties under that authority:
- (1) in good faith;
 - (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (3) in a manner he or she reasonably believes to be in the best interests of the corporation.
- (b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
- (1) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or
 - (2) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.
- (c) An officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.
- (d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he or she performed the duties of office in compliance with this section.

54-142. Resignation and Removal of Officers.

- (a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.
- (b) A board of directors may remove any officer at any time with or without cause.

54-143. Indemnification of Corporate Agents.

- (a) A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending

or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partner, joint venture, trust or other enterprise, against expenses including attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred in connection with the action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

- (b) No indemnification shall be made pursuant to this section in respect of any proceeding in which such person shall have been adjudged to be liable to the corporation.
- (c) No person shall be indemnified under this section in respect of any proceeding charging improper personal benefit to him or her, whether or not involving action in his or her official capacity, in which he or she shall have been adjudged to be liable on the basis that personal benefit was improperly received by him or her.

54-144. Mandatory Indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she is or was a director of the corporation, against reasonable expenses incurred by him or her in connection with the proceedings.

54-145. Advance for Expenses.

- (a) A corporation may pay for or reimburse the reasonable expenses incurred by a director or officer who is a party to a proceeding in advance of final disposition of the proceeding if:
 - (1) the director or officer furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the standard of conduct described in section 54.143;
 - (2) the director or officer furnishes the corporation a written undertaking, executed personally or by a surety or guarantor, to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct; and

- (3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this Section.
- (b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director or officer but need not be secured and may be accepted without reference to financial ability to make repayment.
- (c) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 54.147.

54.146. Court-Ordered Indemnification.

Unless limited by a corporation's articles of incorporation, a director or officer of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding, to the Tribal Court or to another court of competent jurisdiction. On receipt of an application the court, after giving any notice the court considers necessary, may order indemnification in the amount it considers proper if it determines:

- * (1) the director or officer is entitled to mandatory indemnification under Section 54.144, in which case the court shall also order the corporation to pay the director's or officer's reasonable expenses incurred to obtain court-ordered indemnification; or
- (2) the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in Section 54.143 or was adjudged liable as described in Section 54.143(b) or (c), but if the director or officer was adjudged so liable indemnification is limited to reasonable expenses incurred.

54-147. Determination and Authorization of Indemnification.

- (a) A corporation may not indemnify a director or officer under Section 54.143 unless authorized in the specific case after a determination has been made that indemnification is permissible in the circumstances because the director or officer has met the standard of conduct set forth in Section 54.143.
- (b) The determination shall be made:
- (1) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

- (2) if a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;
- (3) by special legal counsel:
- (i) selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or
 - (ii) if a quorum of the board cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board (in which selection directors who are parties may participate);
- (4) by the members of a mutual benefit corporation, but directors who are at the time parties to the proceedings may not vote on the determination.
- (c*) Authorization of identification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.
- (d) A director or officer of a public benefit corporation may not be indemnified until 20 days after written notice is given to the Director of Corporations of the proposed indemnification.

54-148. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him or her against the same liability under this Title.

PART IV: AMENDMENT OF ARTICLES OF INCORPORATION.

54-149. Amendments to Bylaws and Articles of Corporations Without Members.

If a corporation has no members, its board of directors may adopt one or more amendments to the corporation's bylaws and articles, subject to any approvals required by the articles or bylaws. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with Section 54.134. The notice must also state that a purpose of the meeting is to consider a proposed amendment to the articles or bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. In addition to any requirements in the bylaws or articles concerning voting on proposed amendments, the amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

54-150. Amendments to Bylaws and Articles of Corporations With Members.

If the corporation has members, then:

- (1) Unless this act, the articles, bylaws or the board, of directors (acting pursuant to subsection (b)(2)) require a greater vote or voting by class, an amendment to a corporation's articles or bylaws to be adopted must be approved:
 - (i) by the board if the corporation is a public benefit corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;
 - (ii) by the members by two-thirds of the votes cast or by a majority of the voting power, whichever is less; and
 - (iii) in writing by any person or persons whose approval is required by a provision of the articles or bylaws.
- (2) If the board initiates an amendment to the articles or bylaws, or board approval is required by subsection (1) to adopt an amendment, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.
- (3) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the

proposed membership meeting in writing in accordance with Section 54.119. The notice must state that a purpose of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

- (4) If the board seeks to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

54-151. Approval by Third Persons.

The articles or bylaws may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article or bylaw provision may only be amended with the approval in writing of such person or persons.

54-152. Articles of Amendment.

- (a) A corporation amending its articles shall prepare articles of amendment, which shall be executed in duplicate by the corporation by its chief executive officer and shall be verified by the officer who has been delegated responsibility under Section 54.140 of this Title for authenticating corporate records, and shall set forth:

- (1) the name of the corporation;
- (2) the text of each amendment adopted;
- (3) the date of each amendment's adoption;
- (4) if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors;
- (5) if approval by members was required, the number of memberships out standing and the total number of votes cast for and against the amendment.
- (6) if approval of the amendment by some person or persons other than the members or the board is required pursuant to section 54.151, a statement that the approval was obtained.

- (b) The articles of amendment shall be sent to the Director of Commerce with the fees as provided in this Title. If the Director of Commerce approves the amendments, he or she shall issue a certificate of amendment.

PART V: DISSOLUTION.

54.153. Dissolution of Corporations Without Members.

- (a) The board of directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the Director of Commerce articles of dissolution.
- (b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with Section 54.134. The notice must also state that a purpose of the meeting is to consider dissolution of the corporation.
- (c) Dissolution shall be approved by a vote of a majority of the directors in office at the time the transaction is approved.
- (d) The directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

54-154. Voting on Dissolution by Directors and Members.

- (a) Unless this Title, the articles, bylaws or the board of directors or members (acting pursuant to subsection (b)) require a greater vote, dissolution is authorized if it is approved:
 - (1) by the board;
 - (2) by the members, if any, by two-thirds of the votes cast or a majority of the members, whichever is less; and
 - (3) in writing by any person or persons whose approval is required by a provision of the articles authorized by Section 54.151 for an amendment to the articles or bylaws.
- (b) The board may condition its submission of the proposed dissolution on receipt of a higher percentage of affirmative votes or on any other basis.
- (c) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 54.119. The notice must also state that a purpose of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

- (d) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.
- (e) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

54-155. Distributions by Public Benefit Corporations.

- (a) A public benefit corporation shall give the Director of Commerce written notice that it intends to dissolve 10 days before the time it delivers articles of dissolution to the Director of Commerce. The notice shall include a copy or summary of the plan of dissolution.
- (b) No assets shall be transferred or conveyed by a public benefit corporation as part of the dissolution process until twenty days after it has given written notice as required by subsection (a) to the Director of Commerce or until the Director of Commerce has consented in writing to, or indicated in writing that it will take no action with respect to, the transfer or conveyance, whichever is earlier.
- (c) Prior to the expiration of the 20-day period described in subsection (b), the Director of Commerce may bring an action in Tribal Court to challenge the planned distribution of assets, and the Tribal Court may enjoin any distribution pending the outcome of the action.
- (d) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the Director of Commerce a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person, other than creditors, who received assets and indicate what assets each received.

54.156. Articles of Dissolution.

- (a) Subject to any waiting period prescribed by Section 54.155, at any time after dissolution is authorized, the corporation may dissolve by delivering to the Director of Commerce articles of dissolution setting forth:
 - (1) the name of the corporation;
 - (2) the date dissolution was authorized;

- (3) a statement that dissolution was approved by a sufficient vote of the board;
 - (4) if approval of members was not required, a statement to that effect;
 - (5) if approval by members was required, the number of memberships outstanding and the total number of votes cast for and against dissolution.
 - (6) if approval of dissolution by some person or persons other than the members, the board or the incorporators is required pursuant to Section 54.154(a)(3), a statement that the approval was obtained; and
 - (7) the effective date of the articles of dissolution.
- (b) After its articles of dissolution have been accepted for filing by the Director of Commerce, a corporation is dissolved upon the effective date stated in its articles of dissolution.

54-157. Effect of Dissolution.

- (a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
- (1) preserving and protecting its assets and minimizing its liabilities;
 - (2) discharging or making provision for discharging its liabilities and obligations;
 - (3) disposing of its properties that will not be distributed in kind;
 - (4) returning, transferring or conveying assets held by the corporation upon a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;
 - (5) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;
 - (6) if the corporation is a public benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets in accordance with section 54.104(c);

(7) If the corporation is a mutual benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefitting or serving; and

(8) doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

(1) transfer title to the corporation's property;

(2) subject its directors or officers to standards of conduct different from those prescribed in sections 54.137 and 54.141;

(3) change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;

(4) prevent commencement of a proceeding by or against the corporation in its corporate name;

(5) abate or suspend a proceeding pending by or against the corporation in its corporate name; or

(6) terminate the authority of the registered agent of the corporation.

54.158. Known Claims Against Dissolved Corporation.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim, and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

- (1) if a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;
- (2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

54-159. Unknown Claims Against Dissolved Corporation.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claim against the corporation present them in accordance with the notice.

(b) The notice must:

- (1) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located and in a newspaper of general circulation on the Reservation;
- (2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice:

- (1) a claimant who did not receive written notice under Section 54.158;
- (2) a claimant whose claim was timely sent to the dissolved corporation but not acted on;
- (3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

- (1) against the dissolved corporation, to the extent of its undistributed assets; or
- (2) if the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributees.

54-160. Grounds for Administrative Dissolution.

The Director of Corporations may proceed under Section 54.161 to dissolve a corporation administratively if:

- (1) the corporation's period of duration stated in its articles of incorporation expires;
- (2) responses to the interrogatories under the Tribal Comprehensive Business Codes of this Title show that the Corporation has been inactive for a period of at least one year, and there are no plans to reactive the corporation in the future; or
- (3) interrogatories under the Tribal Comprehensive Business Codes have not been answered by any of the persons to whom they were directed for a period of 120 days after becoming due; provided, however, that 30 days before commencing a proceeding under this subsection, the Director of Commerce shall notify each person failing to answer such interrogatories of its intent to commence such a proceeding.

54-161. Procedure for and Effect of Administrative Dissolution.

- (a) If the Director of Commerce determines that one or more grounds exist under Section 54.160 for dissolving a corporation, he or she shall serve the corporation with written notice of his or her determination.
- (b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Director of Commerce that each ground determined by the Director of Commerce does not exist within 60 days after service of the notice is perfected, the Director of Commerce shall administratively dissolve the corporation by signing a

certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Director of Commerce shall file the original of the certificate and serve a copy on the corporation.

- (c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 54.157 and notify claimants under Sections 54.158 and 54.159.
- (d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

54.162. Grounds for Judicial Dissolution.

(a) The Tribal Court may dissolve a corporation:

(1) in a proceeding brought on behalf of the Director of Commerce or other agency or official of the Tribe if it is established that:

- (i) the corporation obtained its articles of incorporation through fraud;
- (ii) the corporation has continued to exceed or abuse, the authority conferred upon it by law;
- (iii) the corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or
- (iv) the corporation is a public benefit corporation and is no longer able to carry out its purposes.

(2) in a proceeding by members holding 25 per cent of the voting power, or by a director, or by any person specified in the articles, if it is established that:

- (i) the directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock;
- (ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
- (iii) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or otherwise would have, expired;

- (iv) the corporate assets are being misapplied or wasted;
or
 - (v) the corporation is a public benefit corporation and is no longer able to carry out its purposes;
- (3) in a proceeding by a creditor if it is established that;
- (i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
 - (ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or
- (4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.
- (b) Prior to dissolving a corporation, the court shall consider whether:
- (1) there are reasonable alternatives to dissolution;
 - (2) dissolution is in the public interest, if the corporation is a public benefit corporation;
 - (3) dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

54-163. Procedure for Judicial Dissolution.

- (a) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.
- (b) The tribal court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.
- (c) A person who brings an involuntary dissolution proceeding for a public benefit corporation shall forthwith give written notice of the proceeding to the Director of Commerce, which may intervene.

54-164. Receivership or Custodianship.

- (a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.
- (b) The court may appoint an individual, or a domestic or foreign business or nonprofit corporation as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.
- (c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:
 - (1) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; provided, however, that the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and (ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation;
 - (2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.
- (d) During a receivership the court may re-designate the receiver a custodian, and during a custodianship may re-designate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and creditors.
- (e) From time to time during the receivership or custodianship the court may order compensation paid and reimbursements made to the receiver or custodian and to his or her counsel and accountant from the assets of the corporation or proceeds from the sale of the assets.

54-165. Decree of Dissolution.

- (a) If after a hearing the tribal court determines that one or more grounds for judicial dissolution described in section 162 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Director of Commerce, who shall file it.
- (b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 157 and the notification of claimants in accordance with Sections 54.158 and 54.159.

54-166. Deposit With Tribal Treasurer.

Assets of a dissolved corporation that should be transferred to an individual who is a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Tribal Treasurer for safekeeping. When the individual furnishes satisfactory proof of entitlement to the amount deposited, the Tribal Treasurer shall pay to the individual the amounts due.

54.167. Severability.

In the event that any provision of this Code shall be found or declared to be invalid, the remaining provisions of this Code shall be unaffected thereby, and shall remain in full force and effect.

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

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal Council, composed of eight members, of which five were present constituting a quorum at a regular meeting thereof; duly and regularly called, noticed, and convened, and held this eighth day of June, 1998; and that this Ordinance was duly adopted by a vote of four for and none against, and that said ordinance has not been rescinded or amended in any way.

DATED THIS 8th DAY OF JUNE, 1998.


MERV GEORGE, JR., CHAIRMAN
HOOPA VALLEY TRIBAL COUNCIL

ATTEST: 
DARCY BALEY, EXECUTIVE SECRETARY
HOOPA VALLEY TRIBAL COUNCIL