

TITLE 73  
GENERAL WELFARE ORDINANCE  
of the Hoopa Valley Tribe

**HOOPA VALLEY TRIBE**

**TITLE 73: GENERAL WELFARE ORDINANCE**

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# HOOPA VALLEY TRIBE

## TITLE 73: GENERAL WELFARE ORDINANCE

### CHAPTER 1. GENERAL PROVISIONS

#### Section 1. Short Title.

This Ordinance shall be known as the Hoopa Valley Tribe (“Tribe”) General Welfare Ordinance (“Ordinance”).

#### Section 2. Authority.

This Ordinance is established pursuant to the sovereign inherent authority vested in the Tribe, through its Tribal Council, as well as the authority vested by Article IX, Section 1 (c), (k) and (l) of the Constitution and By-Laws of the Hoopa Valley Tribe (“Constitution”) provided to the Tribal Council to collect and expend any Hoopa Valley Tribal funds within the exclusive control of the Tribe and to recommend the expenditure of any other tribal funds, to promulgate and enforce ordinances governing the conduct of all members and nonmembers, and to safeguard and promote the peace, safety, morals, and general welfare of the Tribe, and pursuant to the General Welfare Exclusion Act of 2014, codified under Internal Revenue Code (“IRC”) Section 139E, which excludes from gross income, for income tax purposes, the value of general welfare assistance that may be provided to an Eligible Tribal Member.

#### Section 3. Intent.

The Hoopa Valley Tribe, a federally recognized Tribe, exercises its inherent sovereign rights to promote the general welfare of the Tribe, its self-determination, culture, and traditions, by providing general welfare assistance, including Indian general welfare benefits within the meaning of the IRC Section 139E. Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, and the Internal Revenue Service, through its application of the general welfare doctrine, have long recognized the sovereign right of American Indian tribal governments to provide financial assistance to individuals under certain circumstances on a non-taxable basis. This Ordinance is intended to affirm the Tribe’s inherent sovereign rights to promote the general welfare of the Tribe and provide qualifying assistance and program benefits on a tax-free basis. IN this regard, the Constitution of the Tribe confirms the sovereign duty and responsibility of the Tribe to maintain the culture and independence of its members, to encourage the economic well-being of its members, and to promote the rights of its members and their common welfare. The assistance authorized by this Ordinance is intended to qualify for tax-free treatment to the fullest extent permitted at law.

**Section 4. Findings and Purpose.**

(A) The Tribal Council, acting as the legislative body of the Tribe, and acting through its duly elected members, has traditionally exercised the Tribe's sovereign right to provide financial assistance payments to Enrolled Tribal Members in order to promote the welfare and best interests of the Tribe, and desires to affirm its sovereign right to do so on a non-taxable basis.

(B) This Ordinance is intended to memorialize and confirm existing procedures used in the administration of general welfare assistance programs and services, and it is not to be construed as the creation of new general welfare assistance rights that previously did not exist. Programs and services referred to herein must be authorized by the independent action of the Tribal Council or its designees. Assistance provided prior to the enactment of this Ordinance are hereby ratified and confirmed as general welfare assistance pursuant to the authority of the Constitution, as well as the Tribe's inherent sovereignty and right to self-govern.

(C) The purpose of this Ordinance is to assist Enrolled Tribal Members to maintain their health, welfare, well-being, independence, and quality of life. The Tribe has a responsibility to protect and promote the general welfare interests of its Enrolled Tribal Members and to assist in providing support to its Enrolled Tribal Members.

(D) This Ordinance is designed to establish financial need guidelines that will be used in determining eligibility in order to provide general welfare assistance to Eligible Tribal Members for services, activities and needs including medical expenses, utility and transportation expenses, infrastructure, housing, public sanitation services, health and wellness activity expenses, social service expenses, public education, and other related expenses described herein.

(E) It is the Tribe's intent that the assistance provided pursuant to this Ordinance will meet the criteria set forth in the United States Internal Revenue Service ("IRS") Revenue Procedure 2014-35 (including any subsequent IRS guidance) and the Tribal General Welfare Exclusion Act of 2014, for treatment as a tax-exempt benefit. In this regard, the Tribe's Constitution confirms the sovereign duty and responsibility of the Tribe to maintain the culture and independence of its Enrolled Tribal Members, to encourage the economic well-being of its Enrolled Tribal Members, and to promote the rights of its Enrolled Tribal Members and their common welfare.

**Section 5. Definitions.**

In construing the provisions of this Ordinance, the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided, or the context provides otherwise.

(a) "Annual Assistance" means the total amount of Program Assistance that may be paid to a Beneficiary pursuant to Section 3(F) of Chapter 2 of this Ordinance.

(b) "Assistance" means any Program benefits or payments that qualify for tax free treatment under the General Welfare Exclusion.

(c) "Tribe" shall mean the Hoopa Valley Tribe.

(d) "Beneficiary" means any person or persons entitled to receive Assistance or Benefit in accordance with specific Program guidelines. Programs designed to qualify for exemption under IRC Section 139E and Programs designed to meet the Safe Harbor Program may benefit Eligible Tribal Members.

(e) "Benefit" – Any payment made or service provided to or on behalf of a Beneficiary which qualified for non-taxable treatment under the General Welfare Exclusion.

(f) "Compensation" means services should reflect that qualifying Programs are not disguised employment. However, this shall not prevent the Tribe from structuring Programs with community service ties so long as such ties are consistent with the General Welfare Exclusion Act of 2014. For example, programs similar to the U.S. Department of Labor's Workforce Innovation and Opportunity Act may include tax-free Assistance.

(g) "Dependent" - The term "Dependent," for purposes of Internal Revenue Code Section 139E, has the meaning given such term by Internal Revenue Code Section 152, which provides that in general, a "dependent" means: 1) a qualifying child; or 2) a qualifying relative.

(h) "Disability" or "Disabled" means for purposes of Programs covered by this Ordinance shall refer to the inability of an individual to care for himself/herself due to physical or mental limitations or a person who has a physical or mental impairment that substantially limits one or more major life activities and shall be determined in accordance with tribal law.

(i) "Eligible Cost Documentation" means documentation that substantiates the Annual Assistance paid to a Beneficiary of this Program pursuant to Program guidelines.

(j) "Eligible Tribal Member" means any living person, regardless of age, who is an enrolled member of the Tribe at the time of an Assistance determination, and such other individuals who may be treated as members for Assistance, as determined by the Tribal Council in accordance with the laws, customs, and traditions of the Tribe.

(k) "Enrolled Tribal Member" means an enrolled member of the Tribe pursuant to Article IV of the Constitution and Bylaws of the Hoopa Valley Tribe.

(l) "General Welfare Exclusion" means that Assistance shall be treated as non-taxable so long as it satisfies: (1) the requirements for exclusion under IRC Section 139E; (2) it is provided under a Safe Harbor Program; or (3) it meets the General Test.

(m) "General Test" means Assistance will be treated as meeting the General Test under the General Welfare Exclusion if the benefits are: (1) paid by or on behalf of an Indian tribe; (2) under a social benefit program; (3) based on either needs of the Indian community itself or upon individual needs of the recipient (which need not be financial in nature); and (4) are not Compensation for services or per capita payments.

(n) “Lavish” or “Extravagant” means that, except as otherwise required for compliance with final guidance issued under IRC Section 139E following consultation, lavish and extravagant shall be determined by the Tribal Council, in its sole discretion based on all facts and circumstances, taking into account needs unique to the Tribe as well as the social purpose being served by the particular Assistance at hand.

(o) “Non-Covered Medical” means assistance for medical expenses and needs that are not otherwise covered by insurance or covered through other tribal, state, or federal benefits, including but not limited to, in-home professional care from nurses, therapists or licensed caregivers, extended nursing home stays, day care, hospice care, vision care, dental care, durable medical equipment, non-prescription drugs, transportation, meals and lodging for medical care away from home, and insurance co-pays and deductibles.

(p) “Pay,” “Paid,” or “Payment” means pay or reimburse in whole or in part.

(q) “Principal Residence” means a primary residence which is occupied by the Beneficiary for more than a majority of the time during a fiscal year and is used exclusively as his/her principal residence. Principal Residence may also be determined based on the location of the Beneficiary’s spouse and children, the Beneficiary’s driver’s license, the address used for federal and state income tax purposes, where the Beneficiary is registered to vote and other legal indicia of residency. The residence may be real estate property in which the Beneficiary has right, title or interest held by fee simple, by leasehold (including residential land leases and assignments), by tenancy in common, by tenancy in entirety, by joint tenancy, by fractional interest, or other certified legal rights of use and occupancy. Qualifying residences include but are not limited to, a single-family home, mobile homes, apartment, condominium, townhouse, other cooperative or fractional-ownership unit or any other residence designated by the Program. “Housing” and “Residence” shall have the same meaning as Principal Residence.

(r) “Program” or “Approved Program” means any program, board, and committees established by or under authority of the Tribal Council, including any program, board, and committees authorized through the annual budget process, to provide Assistance hereunder. A Program shall not fail to be treated as an Indian tribal government Program solely by reason of the Program being established by tribal custom or government practice.

(s) “Reservation” means the reservation of the Hoopa Valley Tribe and includes all restored ceded lands, all lands held in trust by the United States for the benefit of the Tribe, wherever located, and includes all fee lands owned by the Tribe wherever located or, if the context so permits, any other Indian reservation as defined in IRC Section 168(j).

(t) “Safe Harbor Program” means any guideline and/or policy designation in a Program that meets the safe harbor requirements set forth herein and IRS Revenue Procedure 2014-35, as the same may hereafter be amended. Need shall be presumed for Assistance provided under a Safe Harbor Program.

(u) "Service area" means a geographic area designated by the Assistant Secretary of Interior where financial assistance and social service programs are provided, as defined by 25 C.F.R. Section 20.100, and/or a geographic area designated by the Tribe.

(v) "Service unit area" means the area designated for purposes of administration of Indian Health Service programs under 42 C.F.R. Section 136.21(l), and/or an area designated by the Tribe.

(w) "Self-determination" should be construed broadly to reflect traditional health, education, and welfare programs, as well as unique cultural and traditional based programs and economic development. *See, e.g.*, PLR 199924026 (tax free business grants in part to promote on reservation employment).

(x) "Spouse" shall be determined in accordance with laws, customs, and traditions of the Tribe.

(y) "Tribal Council" or "Council" means the Hoopa Valley Tribe's Tribal Council.

## **Section 6. General Welfare Doctrine.**

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

## **CHAPTER TWO GENERAL WELFARE PROGRAM GUIDELINES**

### **Section 1. Indian General Welfare Benefits.**

(A) Designation of Tribal Programs. Tribal Council shall designate those tribal Programs, which will receive budget approval for each fiscal year consistent with the purposes of this Ordinance. Said approved Programs shall meet the following criteria for exemption under IRC Section 139E and shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need.

(B) General Criteria for Qualification under IRC Section 139E: Each payment made or service provided to or on behalf of an Eligible Tribal Member pursuant to a Program under this Ordinance shall be treated as non-taxable Assistance under the General Welfare Exclusion so long as the following criteria are met:



- (1) The Program is administered under specified guidelines and does not discriminate in favor of the members of the governing body of the Tribe;
- (2) Program benefits are available to any Enrolled Tribal Member who meets such guidelines;
- (3) Program benefits are for the “promotion of the general welfare;”
- (4) Program benefits are not Lavish or Extravagant; and
- (5) Program benefits are not Compensation for services.

(C) Other Qualifying Assistance Programs. Programs that do not qualify for non-taxable treatment under IRC Section 139E or under an IRS Safe Harbor, will nonetheless be treated as non-taxable if Program benefits meet the General Test for treatment under the General Welfare Exclusion. For purposes of the General Test only, needs must be shown in one of the following manners:

- (1) *Individual Needs.* Certain Programs may be based on individual need, rather than an overall need of the Tribe. For those Programs, the Tribal Council may establish income guidelines unique to the Tribe or may use readily available income guidelines used by state or federal programs to demonstrate individual or family need. When individual or family need must be shown, the Program may take into account individual circumstances or extraordinary need to overcome presumptions based on income alone.
- (2) *Community Needs.* Certain Programs may be based on community needs, which are so important to the self-determination, culture, and traditions of the Tribe that Assistance may be deemed necessary regardless of individual income or wealth. The Tribal Council reserves the right to require any applicant applying for consideration based on non-financial or community-based needs to demonstrate how the Program benefits will benefit the tribal community as a whole, including preservation of culture, tradition, and self-determination. Approval based on non-financial need criteria is made on a facts and circumstances basis and will be guided by traditional values and culture. A Program will be deemed to be based on community or non-financial needs if so designated by the Tribal Council.

## **Section 2. General Administrative Procedures.**

(A) Eligibility and Application Procedures. Designated tribal programs shall have eligibility rules and limitations applied to that Program. Each designated program shall present program descriptions, which include eligibility rules and limitations for approval by the Tribal Council or its designee. Only those descriptions and procedures which are approved by the Tribal Council or its designee shall be in force and effect. Program guidelines may limit benefits to an identified group of Eligible Tribal Members, as applicable. All Programs may be limited by budget

availability. In the absence of specific Program guidelines to the contrary, all Programs shall be deemed to incorporate eligibility criteria necessary for compliance with IRC Section 139E.

(B) Limited Use of Assistance. All Assistance disbursed or provided pursuant to this Ordinance must be used for the purpose stated in the approved Program description.

(C) Program Funds Disbursement Process. Subject to Section F(3) of this Chapter, a Beneficiary is eligible to receive up to a maximum Annual Assistance each fiscal year. Program Assistance will be disbursed to or on behalf of the Beneficiary as follows:

- (1) The designated Program will disburse the total Annual Assistance amount to each Beneficiary in accordance with the annual budget approved by the Tribal Council each fiscal year.
- (2) The payment of Annual Assistance shall be in the form of a tribal check or direct deposit payable to the Beneficiary, except in the case of an incapacitated beneficiary. If paid by tribal check, it shall be mailed to the last known address of the Beneficiary, or at a designated place of business approved by Tribal Council or its designee.

(D) Record Maintenance by Tribe. The Tribal Council or its designee(s) shall maintain the following files:

- (1) Each designated department shall verify eligibility for Annual Assistance paid to a Beneficiary and maintain Eligible Cost Documentation to substantiate Annual Assistance limited established each Fiscal Year under the Program;
- (2) For each applicant deemed ineligible, all information and documentation of the decision-making process to disprove eligibility; and
- (3) An annual ledger recording each and every payment of Program assistance provided to a Beneficiary during the applicable Fiscal Year. All ledgers shall be retained for a period of no less than seven (7) years.

(E) Record Maintenance by Beneficiary. Recipients of Assistance benefits hereunder are responsible for maintaining books or records as may be required for substantiation to the IRS for individual income tax purposes. In the event that Assistance payments and/or services are used or pledged for a purpose inconsistent with the purpose set forth in the applicable approved Program or the Beneficiary's application, the Tribal Council or designee may require the repayment of the welfare assistance payment. The Tribal Council or designee is authorized to offset any other payments owed to an Enrolled Tribal Member if such an offset is necessary to secure repayment of a welfare assistance payment in accordance with this Section.

(F) Limitation on Payments; Annual Budgeting; Annual Payments

- (1) *Limitations on Welfare Assistance Payments.* The Tribal Council, within its budgets, by resolution or by motion, may adopt guidelines establishing the maximum Annual Assistance payments to be made to Beneficiaries for certain specified purposes or programs or may delegate the establishment of such limitations to the program level. Such guidelines may also include, by way of example, factors to be considered in determining whether deviations from the general payment limitations should be permitted. Departments charged with administering particular Programs may be delegated authority to adopt program guidelines to the extent not contrary to the overall guidelines and limitations established by the Tribal Council hereunder. In no event shall Assistance be lavish or extravagant. For purposes of periodically testing the propriety of the Annual Assistance provided under this Program, the Tribal Council, or its designee shall conduct due diligence research into the average annual costs which an Enrolled Tribal Member may expect to incur for the types of eligible assistance costs reflected in Section 2 of this Chapter.
  - (2) *Annual Budgeting: Unfunded Program.* The Tribal Council, through its annual budgeting process, by resolution or by motion, shall designate those funding sources that are available for the payment of Assistance benefits. Notwithstanding anything to the contrary, the Assistance payments authorized hereunder shall be “unfunded” for tax purposes and no Beneficiary shall have an interest in or right to any funds budgeted for or set aside for Assistance payments until actually paid. Assistance benefits shall remain assets of the Tribe until distributed, and the Approved Programs shall be administered to avoid premature taxation through the doctrines of constructive receipt and/or economic benefit.
  - (3) *Annual Payments.* Annual Assistance provided pursuant to this Ordinance is subject to availability of funds. The Annual Assistance limit is subject to change from time to time, at the discretion of the Tribal Council. Annual Assistance shall reflect a determination by the Tribe that this amount reasonably represents some or all of the additional financial assistance needs of its Enrolled Tribal Member population, for the types of costs of living reflected in Section 2 of this Chapter, in order to support and maintain their general welfare as set forth in Section 3 of Chapter 1 of this Ordinance. Disbursements of Annual Assistance to a Beneficiary under this Program will only be made in accordance with Eligible Cost Documentation provided to the Program.
- (G) Forfeiture of General Welfare Assistance.
- (1) *Forfeiture.* Notwithstanding anything herein to the contrary, Assistance benefits may be revoked or forfeited for any Beneficiary who is found to have misapplied program funds or to have made any misrepresentations during the application process set forth by the Program. Assistance may also be forfeited should said Assis-

tance benefits be treated as a resource to the detriment of the Tribe or a Beneficiary. The Tribe shall have a right of recovery with regard to any excess or improper payments hereunder.

- (2) *Anti-Alienation.* An Enrolled Tribal Member's rights to apply for General Welfare Assistance payments and/or services under this Ordinance are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, levy, attachment, or garnishment by creditors.

(H) Appeal. Should any Eligible Tribal Member be denied eligibility to the Program, the Eligible Tribal Member may appeal the decision by filing a written notice with the Tribal Council within fourteen (14) working days following the certified mailing of a notice of disapproval. The Eligible Tribal Member shall be entitled to be present at a meeting of the Tribal Council and shall have the right to present oral or written communication with regard to the reconsideration. The Tribal Council shall provide notification of its decision by certified mailing within seven (7) working days of the meeting. The decision of the Tribal Council shall be considered final.

### CHAPTER 3. MISCELLANEOUS

**Section 1. Non-Resource Designation.** General welfare services and Assistance payments hereunder are paid from assets of tribal government; all Assistance payments are based on budget availability of the tribal government, and the tribal government does not guarantee any Assistance payments hereunder. Assistance payments paid hereunder on the basis of need shall not be treated as a resource of the Beneficiary for any purpose. The Tribal Council reserves the right to cancel, adjust, modify, or revoke any Assistance payments that are treated as a resource of the Beneficiary.

**Section 2. Limitation of Liability.** Any agreement or contract for work performed in connection with this Program or any Approved Program under this Ordinance is solely between the Beneficiary and a third party. The Tribe shall not be liable for any loss or damages whatsoever resulting from services performed in connection with assistance provided to a Beneficiary under this Program, and no legal relationship shall be created between the Tribe and a third party on behalf of a Beneficiary, satisfaction of any monetary duty or obligation to a third party shall be owed and remain at all times with the Beneficiary.

**Section 3. Governing Law.** All rights and liabilities associated with the enactment of this Ordinance, or the welfare assistance services, and Assistance payments made hereunder, shall be construed and enforced according to the laws of the Hoopa Valley Tribe.

**Section 4. Sovereign Immunity.** All inherent sovereign rights of the Tribe as a federally recognized Indian tribe with respect to provisions authorized in this Ordinance are hereby expressly reserved, including sovereign immunity from unconsented suit. Nothing in this Ordinance or the related policies or procedures, if any, shall be deemed or construed to be a waiver of the Tribe's sovereign immunity from unconsented suit, or to make applicable any laws or regulations which are inapplicable to the Tribe or from which the Tribe is entitled to exemption because of its sovereign status.

**Section 5. Severability.** If any provision of this Ordinance is held to be invalid, the remainder of this Ordinance shall not be affected.

**Section 6. Federal Trust Obligations; Executive Orders.** The Tribe reserves the right to provide Assistance including circumstances where federal funding is insufficient to operate federal programs designed to benefit Eligible Tribal Members and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Tribe's adoption of Approved Programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Tribe's right to seek funding shortfalls or to enforce the trust rights of the Tribe and its Enrolled Tribal Members. The Tribe shall be entitled to government-to-government consultation and coordination rights in regard to this Ordinance.

**Section 7. Privacy; Information Sharing.** The Tribe will maintain records regarding sensitive tribal and Enrolled Tribal Member matters, including tribal customs, religion, and traditions, confidential from third party disclosures to the fullest extent permitted at law. If information is requested by IRS or other government agencies or third parties during a compliance review or examination, disclosures shall be limited to the extent necessary and required by law pending an effort to address such requests through consultation and other rights under Executive Order 13175 on a government-to-government basis. Confidential tribal information shall not be shared in a manner that would open up additional disclosure. For example, under information-sharing agreements, the recipient may be subject to or under the Freedom of Information Act.


**Section 8. Other Tax Exemptions.** Notwithstanding anything herein to the contrary, the Tribe reserves the right to waive income limits or needs basis criteria, to the extent otherwise applicable, for expenditures that otherwise qualify for tax exemptions including tax exemptions under Titles 25 or 26 of the United States Ordinance, so long as the conditions for exemption are met. Without limitation, this includes Enrolled Tribal Member medical benefits exempt under Section 9021 of the Patient Protection and Affordable Care Act of 2010 (IRC Section 139D) and per capita expenses exempt under 25 U.S.C. Sections 1407 and 1408.

**Section 9. Adoption.** This Program shall become effective upon its approval by majority vote of the Tribal Council at a duly noticed meeting.


CERTIFICATION

I, The undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight (8) members; of which seven (7) were poll voted, constituting a quorum and held this 4<sup>th</sup> day of August 2020 thereof; which will be Reaffirmed at a Regular Meeting rescheduled to August 27, 2020, and that this Ordinance was duly adopted by a vote of six (6) in favor with zero (0) opposed and zero (0) abstaining, and that said Ordinance has not been rescinded or amended in any way since adoption.

DATED THIS FOURTH DAY OF AUGUST 2020.



Byron Nelson, Jr., Chairman  
Hoopa Valley Tribal Council

ATTEST:   
Amber Turner, Executive Secretary  
Hoopa Valley Tribal Council