

# **COQUILLE INDIAN TRIBAL CODE**

## **Part 1 – General Governmental Affairs**

### **Chapter 125 Tribal Indemnity Ordinance**

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**125.010       General**

1. Purpose – Pursuant to the Coquille Indian Tribal Constitution, Article VI, Section 1, the Tribal Council has legislative authority to adopt Tribal laws. In order to recruit and retain highly qualified Tribal Council members the Tribe has adopted this Ordinance to indemnify its Tribal Council members from certain claims.

2. Background and intent – The Coquille Indian Tribe (“Tribe”) is a sovereign self-governing power dedicated to the preservation of Coquille Indian Culture and Tribal Identity; promotion of social and economic welfare of Coquille Indians; enhancement of common resources; maintenance of peace and order; and the safeguarding of Tribal members’ individual rights. The Tribal Council adopts this ordinance in order to ensure that current and former Tribal Council members will be indemnified for the reasonable expenses associated with certain proceedings arising from their official service.

3. Definitions –

a. “Eligible Proceeding” shall mean any litigation, arbitration or similar adjudicative forum before a duly-authorized government court or recognized arbitration service, provided that such proceeding satisfies the requirements of CIRC 125.100(1), is not excluded under CIRC 125.100(2), and is formally initiated after the effective date of this Ordinance.

b. “Tribal Affiliate” means an entity that is owned more than 50% by either the Tribe or an entity that is wholly owned by the Tribe, directly or indirectly.

c. “Tribal Council member” means an individual whom serves on, or has previously served on, the Coquille Indian Tribal Council (“Tribal Council”).

**125.100       Indemnification**

1. Subject to the provisions of this Ordinance, the Tribe will indemnify Tribal Council members for reasonable expenses, including attorney’s fees, in an Eligible Proceeding resulting from a person’s service as a Tribal Council member, if the person at all relevant times:

a. acted in good faith;

b. reasonably believed that her/his conduct or performance was not opposed to the Tribe’s best interests; and

c. had no reasonable cause to believe that her/his conduct or performance was unlawful.

2. CIRC 125.100(1) does not apply in any of the following cases:

a. Proceedings under Article IV, Section 3 or Article VI, section 6 of the Constitution of the Coquille Indian Tribe;

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b. Proceedings in which the Tribal Council member was adjudicated or determined to be liable to the Tribe or a Tribal Affiliate; or

c. Proceedings in which the Tribal Council member's interests are adverse to the Tribe's or to a Tribal Affiliate's.

3. By resolution or by contract, the Tribal Council may pay for or reimburse the reasonable expenses incurred by a Tribal Council member, including attorney's fees, in advance of any final decision or disposition of an Eligible Proceeding, but only after:

a. The Tribal Council member provides the Tribe with a signed certification of the Tribal Council member's good faith belief that the related proceeding qualifies under CITC 125.100(1) and does not meet the criteria of 125.100(2); and

b. The Tribal Council member provides the Tribe with a personally signed, unqualified, unlimited and enforceable undertaking to repay any advance if it is ultimately determined that either

(i) the Tribal Council member failed to meet the criteria under CITC 125.100(1); or

(ii) the proceeding fell within the scope of CITC 125.100(2)

; and

c. The procedures of CITC 125.100(5) are satisfied.

4. A Tribal Council member's conduct with respect to an employee benefit plan for a purpose the Tribal Council member reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of CITC 125.100(1).

5. Determination and Authorization of Indemnification.

a. The Tribe will only indemnify a Tribal Council member after a determination has been made that indemnification of the Tribal Council member is permissible because the Tribal Council member has met the standard of conduct set forth in 125.100(1) and that such indemnity is not excluded under 125.100(2).

b. A determination to indemnify a Tribal Council member:

(i) Must be made by the Tribal Council by majority vote of a quorum consisting of Tribal Council members not at the time parties to the proceeding; or

(ii) If a quorum cannot be obtained as set forth in 125.100(5)(b)(i), then the determination must be made by a committee consisting solely of two or more Tribal Council members not at the time parties to the proceeding; provided that Tribal Council members who are parties to the proceeding may participate in the designation of the committee; or

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(iii) If a quorum of the Tribal Council cannot be obtained under CITC 125.100(5)(b)(i) and a committee cannot be designated under CITC 125.100(5)(b)(ii), the determination must be made by special legal counsel that will be selected by majority vote of the full Tribal Council, including Tribal Council members who are parties to the proceeding. The special legal counsel must be a member in good standing of the Bar of the State of Oregon, or any other jurisdiction where the Eligible Proceeding is located.

6. Any Tribal Council member seeking indemnification, and the Tribal Council member's legal counsel, must cooperate fully with the Tribal Council, and other designated or delegated persons in the defense of such claim. If the Tribal Council determines that a Tribal Council member or a Tribal Council member's legal counsel has not so cooperated or has otherwise acted to prejudice defense of the claim, the Tribal Council may at any time reject indemnification of the claim and its associated legal costs and attorney's fees.

7. If the Tribal Council rejects indemnification of a claim no tribal funds may be paid in settlement of said claim or in payment of any judgment against such Tribal Council member. Such action by the Tribal Council shall not prejudice the right of the Tribal Council member to assert in appropriate proceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the performance of duty, that the act or omission did not amount to malfeasance in office or willful or wanton neglect of duty, or that he or she did in fact cooperate with the Tribe in the defense of the claim.

**125.200 Indemnity Limited to Insurance Proceeds**

Notwithstanding any other provision of Tribal law, indemnity authorized under this Ordinance shall be limited to actual proceeds of applicable insurance policies held by the Tribe.

**125.300 Indemnity of Tribal Executives and Employees**

Subject to the conditions, standards, requirements and procedures of this Ordinance (including but not limited to those contained in CITC 125.100), the Tribe may indemnify Tribal executives (contracted or otherwise) and employees for reasonable expenses, including attorney's fees, in an Eligible Proceeding resulting from a person's service as an executive or employee. Nothing in this ordinance obligates the Tribe to indemnify any executive or employee.

**125.500 Sovereign Immunity**

Nothing in this Ordinance waives or authorizes a waiver of the Sovereign Immunity of the Tribe or any officer, employee or agent.

**125.900 Severability**

If any provision of this Ordinance is held invalid by a court of competent jurisdiction, the invalid portion will be severed and the remaining provisions shall continue in full force and effect.

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History of Amendments to Chapter 125 Tribal Indemnity Ordinance:

Approved 2/27/2020, CY20029

Adopted 4/23/2020, CY20045