

**Redding Rancheria
Claims Against Tribe Ordinance**



ORDINANCE NO.

ORDINANCE OF THE TRIBAL COUNCIL OF THE REDDING RANCHERIA ADDING ARTICLE 3 TO DIVISION 1 OF THE REDDING RANCHERIA TRIBAL CODE GOVERNING CLAIMS FOR DAMAGES AGAINST THE TRIBE AND ITS OFFICERS AND EMPLOYEES AND INDEMNIFICATION OF OFFICERS AND EMPLOYEES.

The Tribal Council of the Redding Rancheria under the authority conferred by Article V, Section 1(g) of the Redding Rancheria Constitution ordains as follows.

Article 3, entitled **CLAIMS AND ACTIONS AGAINST TRIBAL ENTITIES AND TRIBAL OFFICERS AND EMPLOYEES** is hereby added to Division 1, entitled **GOVERNMENT** of the Redding Rancheria Tribal Code to read as follows:

DIVISION ONE - GOVERNMENT

ARTICLE 3

CLAIMS AND ACTIONS AGAINST TRIBAL ENTITIES AND TRIBAL OFFICERS AND EMPLOYEES

Chapter 1

CLAIMS FOR MONEY OR DAMAGES

Sections:

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| 3009 | Time of or presentation of claims |
| 3010 | Grant or denial of claim by Tribal Council |
| 3011 | Notice of rejection of claim |
| 3012 | Mailing or service of notice |
| 3013 | Re-examination of rejected claim |
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- 3001 **Presentation of claims as prerequisite for filing suit.** All claims against the tribe or any of its business enterprises for money or damages shall be presented to the Tribal Council and acted upon as a prerequisite to suit thereon as further provided in this Chapter. All such claims shall be presented as required by this Chapter 1 and in the time periods specified herein.
- 3002 **Claims subject to filing requirements.** The claims subject to the filing requirements under this section shall include, but not be limited to, any and all claims for money or damages; any and all claims by tribal employees for fees, salaries, wages, mileage, or other expenses and allowances, and any and all claims by any federal, state, or local public entity. The provisions of this section shall apply to any and all claims whether they relate to events, transactions, or occurrences that took place prior to the effective date of this ordinance codified in this chapter or after the effective date of this ordinance codified in this chapter. The provisions of the section apply to all claims for money or damages, whether based on contract, tort or other cause of action.
- 3003 **Contents of claims.** A claim shall be presented by the claimant or by a person acting on the claimant's behalf and shall include the following; (1) the name and address of the claimant; (2) the address to which the person presenting the claims desires notices to be sent; (3) the date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted; (4) a general description of the indebtedness, obligation, injury, damage, or loss incurred so far as it may be known at the time of presentation of the claim; (5) the name or names of the tribal employee or employees causing the injury, damage, or loss, if known; and (6) the amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.
- 3004 **Signature of claimant.** The claim shall be signed by the claimant or some person on the claimant's behalf. Claims against the tribe or any of its business entities for supplies, materials, equipment, or services need not be signed by the claimant or on the claimant's behalf if presented on a bill-head or invoice regularly used in the conduct of business of the claimant.
- 3005 **Forms.** The Tribal Council of the tribe may provide forms specifying the information to be contained in claims against the tribe or any of its business enterprises. If the Tribal Council provides forms pursuant to this section, the person presenting the claim need not use such form if he/she presents his/her claim in conformity with Sections 3003 and 3004. A claim presented on a form provided pursuant to this section shall be deemed to be in conformity with Sections 3004 and 3004, if the claim complies substantially with the requirements of the form or with the requirements of said sections.
- 3006 **Amendment of claim; Effect of failure or refusal to amend.** A claim may be amended at any time before the expiration of the period designated in Section 3009 before final action thereon is taken by the Tribal Council of the tribe, whichever is later, if the claim, as amended, relates to the same transaction or occurrence which gave rise to the original claim. The amendment shall be considered a part of the original claim for all purposes.
- 3007 **Notice of insufficiency of claim.** If, in the sole discretion of the Tribal Council or the person designated by it, a claim as presented fails to comply substantially with the requirements of this chapter or the requirements of a form provided under this chapter, the Tribal Council or such person may, at any time within twenty (20) days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. Such notice shall be given in the manner prescribed by this chapter. The Tribal Council may not take action on the claim for period of fifteen (15) days after such notice is given.

3008 **Failure to give notice of insufficiency; Waiver of defense based on defect or omission.** Any defense as to the sufficiency of the claim based upon a defect or omission in the claim as presented is waived by failure to give notice of the insufficiency with respect to such defect or omission as provided in Section 3007, exception that no notice need be given and no waiver shall result when the claim, as presented, fails to state either an address to which the person presenting the claim desires notice to be sent or an address of the claimant.

3009 **Time of or presentation of claims.** A claim relating to a cause of action arising from the death of or for injury to a person or to personal property shall be presented as provided for in this chapter, not later than the ninety (90) days after the accrual of the cause of action. A claim relating to any other cause of action shall be presented, as provided in this Chapter, not later than one hundred-eighty (180) days after the accrual of the cause of action.

3010 **Grant or denial of claim by Tribal Council.** (a) The Tribal Council shall grant or deny the claim within sixty (60) days after it is presented to the Tribal Council. The claimant and the Tribal Council may extend the period within which the Council is required to act on the claim by written agreement made before the expiration of such period.

(b) If the Tribal Council fails or refuses to act on the claim within the time prescribed by this section, the claim shall be deemed to have been denied on the sixtieth day or, if the period within which the Tribal Council is required is extended by agreement, pursuant to this section, the last day of the period specified in such agreement.

3011 **Notice of rejection of claim.** (a) Written notice of the rejection of the claim or the Tribal Council's action on the claim, which is deemed a rejection of the claim under this chapter, shall be given in a manner provided in Section 3013. Such notice may be in substantially the following form:

"Notice is hereby given that the claim which you presented to the Tribal Council of the Redding Rancheria on (indicate date) was (indicate whether rejected, allowed, allowed in the amount of \$_____ and rejected as to the balance, rejected by operation of law, or other appropriate language, whichever is applicable) on (indicate date of action or rejection by operation of law)."

(b) If the claim is rejection in whole or in part, the notice required by subdivision (a) above shall include a warning in substantially the following form:

WARNING

If your claim was based upon the death of or injury to a person or damage to or loss of real or personal property, you have only ninety (90) days from the date this notice was personally delivered or deposited in the mail to take any further action on this claim as may be allowed by law. If your claim is based on some other basis, you have only one hundred eighty (180) days from the date this notice was personally delivered or deposited in the mail to take such action. This notice does not indicate that the tribe or its officers or employees have waived their sovereign immunity from suit. You may seek the advice of any attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately."

3012 **Mailing or service of notice.** The notice required by Section 3011 shall be deemed given when it is either: (1) personally delivered to the claimant or the claimant's representative as specified in the claim or (2) when deposited in the United States mail addressed to the claimant or the claimant's representative as specified in the claim, first class postage prepaid.

3013 **Re-examination of rejected claim.** The Tribal Council may, in its discretion, within the time described by Section 3009 for commencing an action on the claim, re-examine a previously presented claim in order to consider a settlement of the claim.

3014 **Sovereign immunity.** Nothing in this Chapter shall be deemed to waive the sovereign immunity of the Redding Rancheria Tribe or any of its enterprises, officers, agents, or employees.

Chapter 2

INDEMNIFICATION OF TRIBAL OFFICERS AND EMPLOYEES

SECTION:

3100 Defense by tribe; payment of judgments, compromises or settlements

3101 Recovery of payment from tribe.

SECTION 3100: DEFENSE BY TRIBE; PAYMENT OF JUDGMENTS, COMPROMISES OR SETTLEMENTS

- (a) If an employee, including an elected official, *an appointed official*, former employee or official of the tribe (hereafter collectively called "employee") requests the Tribal Council to defend him or her against any claim or action against him or her for damages arising out of an act or omission occurring within the scope of his or her employment as a tribal employee, the tribe shall provide the employee with a legal defense and may, in its discretion, pay any judgment or settlement based on the claim provided:
1. The request is received by the CEO of the tribe not less than 15 days after the employee is served with a summons and complaint; and
 2. The employee reasonably cooperates in good faith in the defense of the claim or action.
- (b) The Tribal Council may refuse to provide a defense or defend under a "reservation of rights," if it determines that the employee committed the act or omission giving rise to the claim or action because of actual fraud, corruption or actual malice.
- (c) In determining whether to pay any settlement or judgment, including a judgment for punitive damages, the Tribal Council shall consider all of the following:
1. Whether the judgment is based on an act or omission of an employee acting within the course and scope of his or her employment as an employee of the tribe.
 2. Whether at the time of the act giving rise to the liability, the employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the tribe.
 3. Whether payment of the claim or judgment would be in the best interests of the tribe.
- (d) Nothing in this section shall be construed as a waiver of the tribe's sovereign immunity from unconsented suit or the immunity of tribal officers and employees from suit for acts or omissions committed within the course and scope of their office or employment.

SECTION 3101:

RECOVERY OF PAYMENT FROM THE TRIBE

- (a) If the tribe did not conduct the employee's defense against an action or proceeding, where the employee was entitled to a defense under Section 3100, an employee may recover from the tribe the defense costs the employee actually and necessarily incurred in conducting his or her own defense; provided:
1. The employee establishes that the act or omission upon which the claim or action was based occurred with the scope of his or her employment by the tribe; and
 2. The tribe fails to establish that he or she acted or failed to act because of actual fraud, corruption or actual malice or that he or she willfully failed or refused to conduct the defense of the claim or action in good faith.
- (b) If the Tribal Council furnished a defense under a reservation of rights, it may recover the defense costs from the employee, if it determines that the employee committed the act or omission giving rise to the claim or action because of actual fraud, corruption or actual malice.
- (c) An employee's exclusive remedy under this section is before the Tribal Council with a right of appeal to the General Council; provided that a Tribal Council member seeking reimbursement under this section shall abstain from voting on the request.

CERTIFICATION

We, the undersigned duly elected officials of the Redding Rancheria, do hereby certify that on January 4, 1996, the foregoing Ordinance was adopted at a duly called meeting of the Tribal Council of the Redding Rancheria with a quorum present by a vote of 6 for, 0 against, 0 abstaining and 0 absent and that it was first amended on June 2, 1998 by a vote of 6 for, 0 against and 0 abstaining.

Edward R. Foreman
Redding Rancheria Chairperson

Dated: 6/9/98

Debbie Sarot
Redding Rancheria Secretary

Dated: 6/9/98

Present Council:

Bob Foreman, Chairman
Tracy Edwards, Vice Chairperson
Gary Hayward
Stacey Greer
Carla Maslin
Debbie Sarot
Hope Wilkes
Leon Benner
Bobby Foreman
Glen Hayward