

## **Chapter 5 – GENERAL WELFARE ORDINANCE**

### **§501 Short Title.**

This Ordinance shall be known and cited as the “Grand Traverse Band General Welfare Ordinance.”

### **§502 Authority.**

This Ordinance is enacted by the Tribal Council pursuant to the powers vested to it under Article IV, Section 1 of the Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians, adopted February 24, 1988, and Approved by the Secretary of the Interior on March 29, 1988, as may be amended from time to time. Pursuant to Section 16 of the Indian Reorganization Act, (P.L. 73-383, 48 Stat. 984).

### **§503 Purpose.**

The purpose of this Chapter is to establish a means of providing assistance to Tribal Members that promotes the general welfare of the Tribe and is excludable from the gross income of those recipients. The Internal Revenue Service in IRS Revenue Procedure 2014-35 provides for safe harbor programs under which, if approved and in writing, would presume need and thus exclude these benefits. Accordingly, this Chapter sets forth a framework to establish programs consistent with IRS Revenue Procedure 2014-35 to ensure compliance with Internal Revenue Code Section 139E and the General Welfare Doctrine that allows for the exclusion of these types of benefits from the gross income of its recipients. The benefits authorized by this Chapter are intended to qualify for favorable tax treatment under the General Welfare Doctrine and IRC Code Section 139E to the fullest extent permitted by law.

Accordingly, all assistance provided under this Chapter:

- (a) Shall be available to any recipients who qualify in accordance with program policies, subject to budgetary restraints;
- (b) Shall be provided in a way that does not discriminate in favor of members of the Tribal Council;
- (c) Shall not be provided as compensation for goods and/or services; and
- (d) Shall not be lavish or extravagant under the facts and circumstances.
- (e) Shall be an unfunded arrangement for tax purposes and shall be limited to funds

appropriated, at the discretion of the Tribal Council. All amounts budgeted by the Tribe for assistance purposes shall remain general assets of the Tribe until such payments are disbursed.

- (f) Shall not be subject to information reporting by the Tribe to the Internal Revenue Service.
- (g) Without limitation, assistance provided under this Chapter shall therefore be treated as nontaxable hereunder:
  - (1) assistance that, when provided, satisfies the requirements for the exemption under Internal Revenue Code Section 139E;
  - (2) assistance that is provided under an IRS safe harbor program;
  - (3) assistance that, when provided, qualifies for exclusion under the IRS General Test of General Welfare Exclusion; or
  - (4) assistance that, when provided, meets another express exemption under the Internal Revenue Code, such as the exemption provided for Tribal medical expenses under Internal Revenue Code Section 139D, or that meets other recognized exemptions.

#### **§504 Ratification of Prior Acts.**

- (a) This Chapter is not to be construed as creating new general welfare assistance rights. Rather, this chapter is intended to codify existing procedures used by the Tribe to administer its general welfare assistance.
- (b) Assistance of the nature addressed in this Chapter provided prior to the enactment of this Ordinance is hereby ratified and confirmed as general welfare assistance provided pursuant to the exercise by the Tribe of its inherent Tribal sovereignty.

#### **§505 Sovereign Immunity Preserved.**

Nothing in this Chapter shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe except as otherwise set forth herein.

#### **§506 Definitions.**

- (a) "Approved Program" means any program or action to provide general welfare assistance that is intended to qualify for treatment under the General Welfare Exclusion, which is adopted as a policy by the Tribal Council.
- (b) "Benefits" means any assistance provided through an Approved Program, including payments, which is provided pursuant to this chapter.

- (c) “General Test” means any assistance that is:
- (1) Paid by or on behalf of the Tribe in accordance with an Approved Program;
  - (2) Based on either needs of the Indian community itself or upon individual needs of the Recipient (which need not be financial in nature);
  - (3) Not compensation for services; and
  - (4) Not per capita payments.
- (d) “General Welfare Exclusion” means any benefit shall be treated as nontaxable under federal law so long as it satisfies the requirements for exclusion under Internal Revenue Code Section 139E, it is provided under a safe harbor program, or it meets the General Test.
- (e) “Lavish” or “Extravagant” shall have the meaning 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, except as otherwise may be required for compliance with final guidance issued under Internal Revenue Code Section 139E following consultation between the Tribe and the Internal Revenue Service.
- (f) “Recipient” means any Tribal Member entitled to receive assistance in accordance with specific Approved Program requirements.
- (g) “Tribal Member” means any person who is a duly enrolled member of the Grand Traverse Band of Ottawa and Chippewa Indians.

#### **§507 Nonresource Designation.**

The Tribe does not guarantee Benefits under this Chapter. Benefits shall not be treated as a resource or asset of a Recipient for any purpose and no Recipient shall have an interest in or right to any funds budgeted for, or set aside for, Approved Programs until paid. The Tribe reserves the right to cancel, adjust, modify or revoke any benefit treated as a resource of the Recipient. Approved Programs shall be administered at all times to avoid triggering of the doctrines of “constructive receipt” and/or “economic benefit” to the extent such doctrines are inconsistent with the purposes of this Ordinance.

#### **§508 Rights and Liabilities.**

- (a) All the rights and liabilities associated with the enactment of the ordinance codified in this Chapter, or the Benefits made hereunder, shall be construed and enforced according to the laws of the Grand Traverse Band of Ottawa and Chippewa Indians and applicable federal law.

- (b) Nothing in this Chapter or the related policies or procedures adopted for its implementation, if any, shall be construed to make applicable to the Tribe any laws or regulations which are otherwise inapplicable to the Tribe.
- (c) The Tribe reserves the right to provide Benefits in circumstances where federal funding is insufficient to operate federal programs designed to benefit Recipients and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations.
- (d) The Tribe's adoption of its 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 members.

**§509 Program Approval.**

- (a) The Tribal Council shall approve programs consistent with the purposes set forth in this chapter. Each Approved Program shall be consistent with the General Welfare Doctrine as to purpose, eligibility, and funding. In the absence of specific requirements to the contrary, all Approved Programs shall be deemed to incorporate eligibility criteria that comply with Internal Revenue Code Section 139E.
- (b) At a minimum, program policies submitted for review and approval shall:
  - (1) Not discriminate in favor of the members of the Tribal Council;
  - (2) Ensure Benefits are available to any Tribal Member who meets such policy requirements;
  - (3) Provide that the Benefits provided are for the promotion of the general welfare;
  - (4) Determine that the Benefits are not Lavish or Extravagant; and
  - (5) Confirm that the provision of Benefits is not compensation for services.

**§510 Program Eligibility.**

- (a) Eligibility for Benefits shall be limited to Tribal Members. Approved Programs may limit Benefits to an identified group of Tribal Members.
- (b) Programs comprising descriptions, including eligibility rules and limitations, may be presented to the Tribal Council for approval in accordance with this Chapter.
- (c) Only those programs that are adopted by the Tribal Council shall be considered to be in force and effect.

**§511 Means Testing not Required.**

Consistent with Internal Revenue Code Section 139E and the IRS safe harbor guidance, Approved Programs may be based on nonfinancial need under the General Test that are not individually means tested. Nonetheless, programs providing Benefits where eligibility is financial-need based may also be approved.

#### **§512 Transferability.**

A Recipient's eligibility for a Benefit is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the Recipient.

#### **§513 Ceremonial and Culturally-Related Gifts and Honorariums**

For safe harbor programs, and subject to amendments to Revenue Procedure 2014-35 hereafter, the Tribe will presume that individual need is met for religious or spiritual leaders (including but not limited to traditional healers) receiving the following benefits, and that the benefits do not represent compensation for services:

- (a) Benefits provided under an Indian Tribal governmental program that are items of cultural significance that are not Lavish or Extravagant under the facts and circumstances, as determined by the Tribal Council; or
- (b) Nominal cash honoraria provided to religious or spiritual officials or leaders (including, but not limited to traditional healers) to recognize their participation in cultural, religious, and social events (including, but not limited to, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and subsequent honoring events).

#### **§514 Safe Harbor Programs**

- (a) Programs that meet the following general criteria for safe harbor treatment, and provide qualifying safe harbor benefits, shall be treated as nontaxable Benefits under the General Welfare Exclusion without the Recipient having to demonstrate individual need:
  - (1) The benefit is provided under a specific Approved Program of the Tribe;
  - (2) The program has written policies specifying how individuals may qualify for the benefit;
  - (3) The benefit is available to any Tribal Member or identified group of Tribal Members who satisfy the program policies, subject to budgetary restraints;
  - (4) The distribution of Benefits from the program does not discriminate in favor of the governing body of the Tribe;
  - (5) The benefit is not compensation for goods or services; and
  - (6) The benefit is not Lavish or Extravagant under the facts and circumstances, as determined by the Tribal Council.

(b) The following benefits may be provided under a safe harbor program. The benefits listed in the parenthetical language herein are illustrative only, rather than an exhaustive list. Thus, a benefit may qualify for exclusion from gross income as a safe harbor program even though the benefit is not expressly described in the parenthetical language herein; provided, that it meets all other requirements of the Internal Revenue Service Code, and Revenue Procedure 2014-35 (as may be amended):

- (1) **Housing Programs.** Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes, that:
  - A. Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;
  - B. Enhance habitability of housing, such as by remedying water, sewage, or sanitation service, safety issues (including, but not limited to, mold remediation), or heating or cooling issues;
  - C. Provide basic housing repairs or rehabilitation (including, but not limited to, roof repair and replacement);
  - D. Pay utility bills and charges (including, but not limited to, water, electricity, gas, and basic communications services such as phone, internet, and cable); or
  - E. Pay property taxes or make payments in lieu of taxes (PILOTs).
  
- (2) **Educational Programs.** Programs to:
  - A. Provide students (including, but not limited to, post-secondary students) transportation to and from school, tutors, and supplies (including, but not limited to, clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities;
  - B. Provide tuition payments for students (including, but not limited to, allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education;
  - C. Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and
  - D. Provide job counseling and programs for which the primary objective is job placement or training, including, but not limited to, allowances for expenses for interviewing or training away from home (including, but not limited to, travel, auto expenses, lodging, and food); tutoring; and appropriate clothing for a job interview or training (including, but not limited to, an interview suit or a uniform required during a period of training).

(3) **Elder and Disabled Programs.** Programs for individuals who have reached age 60 or are mentally or physically disabled (as defined under applicable law, including, but not limited to, Tribal laws) that provide:

- A. Meals through home-delivered meal programs or at a community center or similar facility;
- B. Home care such as assistance with preparing meals or doing chores, or day care outside the home;
- C. Local transportation assistance; and
- D. Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).

(4) **Cultural and Religious Programs.** Programs to:

- A. Pay expenses (including, but not limited to, admission fees, transportation, food, and lodging) to attend or participate in an Indian Tribe's cultural, social, religious, or community activities such as ceremonies and traditional dances;
- B. Pay expenses (including, but not limited to, admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Tribe, including, but not limited to, those on other Indian reservations;
- C. Pay the costs of receiving instruction about an Indian Tribe's culture, history, and traditions (including, but not limited to, traditional language, music, and dances);
- D. Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and
- E. Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Tribe or another Tribe.

(5) **Other Qualifying Benefit Programs.** Programs to:

- A. Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores);
- B. Pay for the cost of transportation, temporary meals, and lodging of a Tribal Member while the individual is receiving medical care away from home;
- C. Provide assistance to individuals in exigent circumstances (including, but not limited to, victims of abuse), including, but not limited to, the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses;
- D. Pay costs for temporary relocation and shelter for individuals displaced from their homes (including, but not limited to, situations in which a home is destroyed by a fire or natural disaster);
- E. Provide assistance for transportation emergencies (for example, when stranded away

- from home) in the form of transportation costs, a hotel room, and meals; and
- F. Pay the cost of nonprescription drugs (including but not limited to traditional medicines).

**§515 Non Safe Harbor Programs**

Nothing in this Chapter or the IRS safe harbor guidance shall limit the Tribe's right to provide benefits outside of the safe harbor rules. Any changes to the safe harbor programs as a result of the Indian General Welfare Exclusion Act of 2014 shall be immediately incorporated, by reference, into this Chapter.