

HABEMATOLEL, POMO OF UPPER LAKE

Tribal General Welfare Ordinance

The Executive Council of the Habematolel, Pomo of Upper Lake (“Tribe”), as the governing body empowered to act in all matters that concern the general welfare of the Tribe, pursuant to Article X, Section 1(A) of the Constitution, and as further empowered to adopt resolutions, ordinances not otherwise provided by the Constitution, pursuant to Article X Section 1(P) of the Constitution, hereby enacts the following:

Section 1. Findings

The Executive Council finds and declares as follows:

- A. The Tribe has inherent authority, as a sovereign, to protect and preserve the homeland of the Tribe and to work toward the goal of self-determination and self-sufficiency through lawful means.
- B. The Tribe, through the Executive Council, has the power to appropriate, administer, and set aside funds under Tribal control for the use and benefit of the General Membership.
- C. The Tribe, through the Executive Council, has the power to advocate services for the health, education and welfare of its Members under Tribal jurisdiction.
- D. On June 3, 2014, following consultation with Indian tribal governments and others, the Internal Revenue Service issued IRS Revenue Procedure 2014-35, entitled Application of the General Welfare Exclusion to Indian Tribal Government Programs That Provide Benefits to Tribal Members, providing guidance on the taxation of general welfare payments made by tribes to members and other persons.
- E. On September 26, 2014, the Tribal General Welfare Exclusion Act became law and established a new Internal Revenue Code section to apply the already existing general welfare tax exclusions to Indian tribes and payments received by tribal members, their spouses, their dependents, and other persons. Under this federal law, qualifying general welfare payments made to members and other persons related to Indian tribes are not taxable as gross income for the recipients.
- F. It is in the best interests of both the Tribe and individual Members to ensure that all benefits administered through Tribal General Welfare Programs are administered in accordance with the Tribal General Welfare Exclusion Act and the guidance provided by the IRS.
- G. It is further in the best interests of the Tribe and individual members to provide guidance, through this Ordinance, in order to ensure Tribal General Welfare Programs’ compliance with the Tribal General Welfare Exclusion Act and the guidance provided by the IRS.

Therefore, in accordance with the powers enumerated in the Tribe's Constitution, this Ordinance is created to effectuate the Tribe's right to administer Tribal General Welfare Programs for the benefit of its Members and Other Qualified Persons and to ensure that such Programs are administered in a manner such that tax burdens on the recipients of such benefits are minimized in compliance with applicable laws, including but not limited to the Tribal General Welfare Exclusion Act.

Section 2. Definitions

For the purposes of this Ordinance, the following words shall have the following meanings:

- A. **“Constitution”**: The Constitution of the Habematoel Pomo of Upper Lake, as ratified by the Tribe on April 17, 2004 and approved by the United States federal government on May 12, 2004.
- B. **“Executive Council”**: The Habematoel Pomo of Upper Lake Executive Council, the Tribe's governing body as established by the Tribe's Constitution.
- C. **“General Membership”**: The body comprised of all Tribal Members.
- D. **“Internal Revenue Code” or “IRC”**: The United States Internal Revenue Code, setting forth the tax laws of the United States.
- E. **“Internal Revenue Service” or “IRS”**: The United States Internal Revenue Service, its agents and personnel, who are charged with enforcing the IRC.
- F. **“IRS Guidance”**: IRS Revenue Procedure 2014-35, entitled Application of the General Welfare Exclusion to Indian Tribal Government Programs That Provide Benefits to Tribal Members, as issued by the IRS on June 3, 2014 and as may be amended by the IRS, which addresses benefits provided on or after December , 2012.
- G. **“Member”**: A person who is an enrolled member of the Tribe, as defined in Article III of the Constitution and pursuant to the procedures set forth therein.
- H. **“Ordinance”**: This Tribal General Welfare Ordinance.
- I. **“Other Qualified Person”**: An individual who is not a Member of the Tribe but is otherwise qualified to receive benefits or services from the Tribe, as determined under the terms of conditions of the same (e.g., spouses and registered domestic partners of Members, children and step children of Members, persons who are affiliated with the Tribe but members of other Indian tribes, etc.).
- J. **“Tribal Administrator”**: The individual employed by the Tribe as its Tribal Administrator.
- K. **“Tribal Agency”**: Any Tribal organization that oversees, administers, distributes or is otherwise involved in the delivery Tribal services, funds, or benefits to Members and Other Qualified Persons.
- L. **“Tribal General Welfare Benefits” or “Benefits”** : Any social or general welfare benefit

provided by the Tribe to its members, regardless of whether it takes the form of a monetary payment, service or property, that is administered in accordance with applicable law, including but not limited to this Ordinance, the Tribal General Welfare Exclusion Act and the IRS Guidance.

- M. **“Tribal General Welfare Exclusion Act”**: Public Law No. 113-168 (2014) as instituted on September 26, 2014 and as may be amended by the United States.
- N. **“Tribal General Welfare Program” or “Program”**: Any program that is established by the Tribe for purposes of administering Tribal General Welfare Benefits pursuant to a program that falls under one of the categories articulated in section 4.6 of this Ordinance.
- O. **“Tribe”**: The Habematolel Pomo of Upper Lake, a federally recognized Indian tribe, including authorized officials and agencies of the Tribe.

Section 3. Sovereign Immunity

The sovereign immunity of the Tribe is in no manner waived by this Ordinance. Neither is sovereign immunity waived by any action of the Executive Council, Tribal Agency, or staff of the Tribe acting pursuant to this Ordinance.

Section 4. Tribal General Welfare Benefits, Programs and & Benefits Administration

4.1 General Statement of Purpose: The Tribe is committed, to the maximum extent possible, to administering and providing social and general welfare benefits to Members and Other Qualified Persons in a manner that satisfies available “safe harbor” provisions, such that these Benefits are not deemed taxable gross income for the recipients.

4.2 Benefit Form, Nature, Intent and Source. The Tribe may provide benefits to Members and Other Qualified Persons for their general and social welfare. Such benefits may be in the form of services, payment, or reimbursement in money or other property. Benefits shall not be provided as compensation for services, and benefits shall not be lavish or extravagant relative to the context in which they are provided.

Unless otherwise approved by the Executive Council in writing and before distribution, no social or general welfare benefit shall be provided by the Tribe to any Member or Other Qualified Person outside of the context of an established Tribal General Welfare Program and pursuant to the terms and conditions established by the same in accordance with this Ordinance and other applicable law, including but not limited to the Tribal General Welfare Exclusion Act and the related IRS Guidance.

4.3 Written Program Guidelines: All Tribal General Welfare Programs shall adopt written guidelines setting forth: (1) the specific Benefit Program Category that the Program and Benefit falls under (described below in subsection 4.6); (2) the

Program's commitment to compliance with the non-discrimination terms set forth in subsection 4.4 below; (3) the Program's commitment to compliance with the record-keeping terms set forth in subsection 4.5 below; (4) the specific Benefit(s) available under that Program and the form(s) of those Benefit(s) will take (e.g., monetary payment, service, etc.); (5) details regarding how individuals may qualify for the specific Benefit(s) administered by that Program (e.g., all Benefit criteria or qualification requirements); and (6) details regarding the Benefit application, issuance/distribution, and renewal processes.

Such written guidelines shall be made available to all persons who may qualify to receive the Benefit(s) at issue. To achieve this, Programs shall maintain a hard copy of all such materials in the Program's office and make the same available for inspection by persons who may qualify to receive the Benefit(s). In addition, Programs should attempt to make the written guidelines available on-line, through the Program's website (if one exists).

4.4 Nondiscrimination in Benefits Administration: Benefits shall be made available to any Member, Other Qualified Person, or identified group of Members or Other Qualified Persons (e.g., veterans, enrolled students, etc.) who meet Program criteria. Benefits shall not be administered or distributed in a manner that discriminates in favor of Members of the Executive Council, or in favor of Members belonging to any other Tribal agency or entity, including the family of such persons.

4.5 Maintenance of Benefit Records: The Program must maintain accurate books and records detailing all aspects of Benefit administration, including information regarding Benefit applicants, Benefit recipients, the dates and amounts of individual Benefit distributions, and similar information that will demonstrate that the Benefits are administered in compliance with this Ordinance.

Such books or records must be up to date and available at all times for inspection by authorized persons and entities, including but not limited to the Executive Council, the Tribal Administrator, and the IRS.

4.6 Benefit Program Categories: Benefits shall generally be provided through Programs that fall into one or more of the following categories:

4.6.1: 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. Assist in payment of mortgage payments, down payments, rent payments (including security deposits) for principal residences;
- b. Assist in payment for improving habitability of housing, such as by addressing water, sewage, sanitation service, safety (including mold

remediation) or heating/cooling issues;

- c. Assist in payment for basic housing repairs or rehabilitation (including roof repair/replacement); and (iv) assist in payment of utility bills and charges (including water, electricity, gas, and communication services (phone, internet, cable)).

4.6.2: Educational Programs. Programs that:

- a. Provide students (including post-secondary students) with payment for transportation to and from school, tutors, and supplies (including clothing, backpacks, computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities;
- b. Provide tuition payments for students (including 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 educations, 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: (a) expenses for interviewing or training away from home (including travel, auto expenses, lodging, and food); (b) tutoring; and (c) appropriate clothing for job interview or training (including an interview suit or uniform required during a period of training)

4.6.3: Elder and Disabled Programs. Programs for individuals who have reached the age of 55 or are mentally or physically disabled and which 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, performing chores, or day care outside the home;
- c. Local transportation or assistance;
- d. Improvements to adapt housing to special needs (including grab bars, ramps, etc.).

4.6.4: Other Qualifying Assistance Programs. Various programs that:

- a. Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between the Rancheria, 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 Member or Other Qualified Person while the individual is receiving medical care away from home;
- c. Provide assistance to individuals in exigent circumstances, 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 involuntarily 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 Tribal medicines).

4.6.5: Cultural and Religious Programs. Programs that:

- a. Pay expenses (including but not limited to admission fees, transportation, food, and lodging) to attend or participate in the Tribe's cultural, social, religious, or community activities, such as pow-wows, 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 other Indian reservations, Rancherias, or sites of cultural or religious significance to the Tribe;
- c. Pay the costs of receiving instruction about the 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

In the event the contemplated benefit is not administered through a Program that falls into one or more of the above categories, the Program shall consult and obtain written permission from Executive Counsel before moving forward with distribution of the contemplated benefit.

Section 5. Corrective Actions for Existing Tribal General Welfare Programs

For those programs and Tribal Entities that presently exist and administer any benefit that may qualify as a Benefit under the Tribal General Welfare Exclusion Act and the related IRS Guidance, such programs shall immediately take steps to comply with this Ordinance and come into full compliance as soon as possible, and no later than January 31, 2015 in any event.

In addition, such programs shall provide a written report to the Executive Council confirming compliance with this Ordinance, summarizing changes made to come into compliance, and stating any related concerns. This written report shall be submitted as soon as possible and no later than March 1, 2015 in any event.

Finally, such programs shall identify Members and Other Qualified Persons who received benefits (excluding any per capita distributions) from the Tribe at any time from January 1, 2010 to the present. Programs shall then provide written notification to such Members and Other Qualified Persons, informing them that: (1) they may be entitled to a refund from the IRS in light of the recently enacted Tribal General Welfare Exclusion Act and the related IRS Guidance; and (2) they should consult a tax professional regarding the same. All programs must complete this identification and notification process as soon as possible and no later than February 28, 2015.

Section 6. Statements regarding taxability of Tribal General Welfare Program Benefits.

Programs shall not, either directly or indirectly, provide any advice, opinion, or statement to anyone regarding the taxability of any Benefit provided to Members and/or Other Qualified Persons under any Tribal General Welfare Program.

Section 7. Amendments

This Ordinance, or any section herein, may be amended by a majority vote of the Executive Council.

Section 8. Severability

If any part of this Ordinance is found void and without legal effect, the remainder of the Ordinance shall continue to remain in full force and effect, as though such part had not been contained therein.

Section 9. Effective Date

This Ordinance shall take effect on the date it is approved by the Executive Council and shall replace all existing Tribal Members Employment Preference Ordinances and related practices, whether formal or informal, written or oral.

CERTIFICATION

We the undersigned Officers of the Habematolel Pomo of Upper Lake (the "Tribe"), being the Chairperson and Secretary of the Executive Council of the Tribe, do hereby certify that the foregoing Ordinance was adopted by Resolution Number **02-15-02** by an official vote of Executive Council which is composed of seven (7) Council Members, of which 7 participated, constituting a quorum, a poll vote was duly conducted on this day of February 6, 2015, and that this Ordinance was initially adopted by an affirmative vote of 6 YEAS, 0 NAYS, and 1 ABSTENTION. We further certify that this Ordinance has not been rescinded, amended, or modified in any way.



Sherry Treppa, Executive Council Chairperson

6.8.15

Date



Iris Picton, Executive Council Secretary

6/5/15

Date

