

**Dry Creek Rancheria
Band of Pomo Indians**

Business Code

TITLE 3. CORPORATIONS AND TRIBAL ENTITIES

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CHAPTER 1. GENERAL PROVISIONS

Section 1. Short Title

This Title shall be known and may be cited as the “**Corporations and Tribal Entities Code.**”

Section 2. Scope

The provisions of this Title shall apply to all corporations authorized herein and formed under the laws and sovereign power of the Tribe, whether before or after the enactment hereof, and more specifically prescribed in Titles 1-9 of the Tribal Code. The Tribal Department of Commerce established herein shall have such authority as prescribed individually and collectively in Titles 1-9 of the Tribal Business Code.

SECTION 3. Purpose and Construction

(A) The purposes of this Title are:

- (1) To encourage commerce by providing limitations on the liability of participants in incorporated enterprises;
- (2) To reform the laws of business corporations by allowing greater flexibility in the organization and operation of close corporations;
- (3) To ensure that corporate assets are available for the satisfaction of valid claims of corporate creditors; and
- (4) To simplify, clarify and modernize the laws applicable to businesses created under the sovereign powers of the Tribe.

(B) The provisions of Title shall be liberally construed and applied to promote its underlying purposes and policies.

SECTION 4. Definitions

(A) "Articles" means the articles of incorporation, charter, or other documents evidencing the creation of a corporate entity pursuant to sovereign powers.

(B) "Close Corporation" means a corporation, the shares of which are not publicly traded and are subject to restrictions on transfer.

(C) "Controlled" as used in reference to corporations controlled by the Tribal Council, includes any corporation where the majority of its Board of Directors are chosen by the Tribal Council, as well as entities of the Tribe without boards of directors.

(D) "Deliver" includes delivery by mail.

(E) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or the incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; or otherwise.

(F) "For-Profit Corporation" means a corporation of which the income is distributable for the benefit of its shareholders, and whose assets, upon dissolution, are distributable to its shareholders.

(G) "Individual" includes the estate of an incompetent or deceased individual. (H) "Interrogatories" means formal written questions seeking information in the form of a written response.

(I) "Non-Profit Corporation" means one in which no part of the income of the corporation is distributable to any person by reason of that person's status as a

member, director, officer, or employee, except for reasonable wages for work performed.

(J) "Notice" means written notice unless oral notice is reasonable under the circumstances.

(K) "Quorum" means the number of members of a board or other body which must be present in order to make the board or other body competent to transact business in the absence of the other members.

(L) "Shares" means the units into which the proprietary interests in a for-profit corporation are divided.

(M) "Shareholder" means the person in whose name shares are registered in the records of the corporation.

(N) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

SECTION 5. Tribal Department of Commerce

(A) The Tribal Department of Commerce is hereby established and shall oversee implementation of the Tribal Business Code. All actions of the Department of Commerce shall be subject to review by the Tribal Council, including those prescribed in the Tribal Comprehensive Business Policy Code, Title 1.

(B) The Director of Commerce shall oversee the operations of the Department of Commerce and shall have authority to perform functions that are necessary and proper in order to administer and enforce the provisions of this Title, including but not limited to the power:

- (1) To review and approve applications for incorporation and grant certificates of incorporation under Titles 3, 4, 5, and 6;
- (2) To review and approve amended articles of incorporation and issue certificates of amendment;
- (3) To review and approve proposed articles of dissolution and to dissolve corporations administratively;
- (4) To accept for filing such other notices, reports, and other documents from corporations for the purpose of making such documents available to the public upon request;

(5) To furnish, on request, copies of articles of incorporation, notices, reports and other documents to the public upon the payment of reasonable fees;

(6) To issue interrogatories and demands for inspection or production of documents to corporations in accordance with the provisions of this Title;

(7) To supervise the orderly dissolution of corporations formed under tribal law;

(8) To bring actions or participate in actions in Tribal Court or any other court of competent jurisdiction for the enforcement of any of the provisions of the Tribal Comprehensive Business Code;

(9) To promulgate regulations pursuant to this Title, formulate recommendations to submit to the Council for revisions of or amendments to the Comprehensive Business Code, and take other actions necessary for the administration of the provisions of the Comprehensive Business Code; Functions as, upon approval by the Tribal Council, to enter into agreements or contracts with Indian tribes, businesses, and other parties to implement the Tribal Comprehensive Business Code. Provided, however, that the Director of Commerce shall not have authority to regulate with respect to for-profit entities which are owned, in whole or in part, directly by the Tribe, nor shall it have the authority to regulate with respect to nonprofit entities which are controlled by the Tribal Council.

SECTION 6. Status of Corporations

(A) For the sole purposes of taxation, regulatory jurisdiction, and civil jurisdiction, the following corporate entities shall be entitled to all of the privileges and immunities of members of federally-recognized Indian tribes:

- (1) All for-profit corporations formed pursuant to the sovereign powers of the Tribe which are managed by members of federally recognized Indian tribes and which are at least 51% owned by Indians who are members of federally-recognized tribes.
- (2) All non-profit corporations formed pursuant to the sovereign powers of the Tribe which are managed by members of federally recognized Indian tribes and which have as their primary purpose benefiting the people of the Rancheria or any group of people which comprises primarily members of federally-recognized Indian tribes.

(B) In the case of any corporation having its principal place of business on the Rancheria which has been incorporated under the laws of any state and also pursuant to the sovereign powers of the Tribe, the ordinances and resolutions of the Tribal

Council, the Constitution of the Tribe and the tribal charter documents shall take precedence over any conflicting state laws or charter documents in any dispute concerning the status of the corporation or the rights and obligations of any persons with respect to the corporation.

(C) The Tribal Court shall have jurisdiction to decide all questions with respect to the status of corporations formed pursuant to the sovereign powers of the Tribe.

SECTION 7. Reporting Requirements

The Director of Commerce may propound to any corporation subject to the provisions of the Tribal Comprehensive Business Code, such interrogatories or demands to inspect documents as may be reasonably necessary or proper to enable the Director to ascertain whether such corporation is complying with all of the provisions of the Codes. Such interrogatories or demands for inspection shall be answered within 30 days after the mailing thereof, and the answers thereto shall be full and complete and shall be under oath.

SECTION 8. Jurisdiction of Tribal Court

To the maximum extent consistent with due process of law, all corporations formed pursuant to the sovereign power of the Tribe and all directors, officers and shareholders of such corporations shall be subject to the jurisdiction of the Tribal Court in all actions which arise out of the acts, omissions or participation of such persons in connection with the affairs of such corporations; provided, however that this section shall not apply to corporations which are owned in whole or in part by the Tribe or which are controlled by the Tribal Council, or to the directors or officers of such corporations.

This section shall not be construed as a waiver of sovereign immunity.

SECTION 9. Registered Agent

All corporations formed pursuant to the sovereign power of the Tribe shall appoint a person to accept the service of judicial process on the corporation. All corporations shall notify the Director of Commerce of any change in the name or address of the corporation's registered agent. All corporations formed pursuant to the sovereign powers of the Tribe are hereby deemed to consent to the appointment of the Director of Commerce as their agent for the acceptance of service of process in the event the corporation shall have failed to notify the Director of Commerce of any change in the name or the address of its registered agent. In such cases, service upon the Director of Commerce shall be deemed to be service on such corporation within 10 days thereof, provided, the Director of Commerce shall mail notice of such service to any incorporator, director, officer or shareholder of the corporation at the most recent address noted in the files of the Director of Commerce.

SECTION 10. Liability of Shareholders or Members

No shareholder or member of any corporation formed pursuant to the sovereign powers of the Tribe, including those formed pursuant to Titles 3, 4, 5 and 6 of the Tribal Business Code, shall be liable to any creditor of the corporation by reason of his or her status as a shareholder or member, except insofar as said shareholder or member may be indebted to the corporation for unpaid loans or indebtedness for the purchase of shares.

SECTION 11. Corporate Name

(A) The name of any for-profit corporation shall contain the words, "Corporation", "Incorporated", or "Limited", or shall contain an abbreviation of one of such words.

(B) The name of any non-profit corporation may contain the words "Incorporated", "Corporation", "Limited", "Association", "Fund", "Society", "Club", "Foundation", or "A Non-profit Corporation."

(C) No corporation formed under Titles 3, 4, and 5 shall use any corporate name which is the same as, or deceptively similar to, any other corporation formed pursuant to the sovereign powers of the Tribe.

(D) No corporation which is privately owned or controlled shall use any name or make any representation which implies that it is a subdivision or enterprise of the Tribe.

SECTION 12. Fees

The Director of Commerce shall charge:

(A) For filing an application for incorporation and proposed articles of incorporation, \$50.00;

(B) Filing an application for an amendment to the articles of incorporation, \$25.00;

(C) Filing a statement of change of name or address of registered agent, \$10.00;

(D) Filing any other statement or report of a corporation, \$10.00;

(E) For furnishing a certified copy of any document, instrument report or other paper relating to a corporation, \$5.00;

(F) For furnishing a certificate as to the status of a corporation or as to the existence or non-existence of facts relating to corporations, \$25.00; and

(G) For copies to any person or group that exceed 25 pages in length, a charge of \$.10 per page

SECTION 13. Savings Clause

In event that any provision of this Title shall be found or declared to be invalid, the remaining provisions of this Title shall be unaffected thereby, and shall remain in full force and effect.

