

# **REDDING RANCHERIA TRIBAL GOVERNMENT POLICIES**

## **Chapter TP 1-1100**

### **General Welfare Implementing Policies**



**May 12, 2015**

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SECTION 1: PURPOSE

The purpose of this policy is to provide for the implementation of the Redding Rancheria General Welfare Ordinance, by providing uniform guidance associated with the authorization, management, administration and records of Redding Rancheria assistance programs authorized pursuant thereto.

SECTION 2: BACKGROUND AND INTENT

(a) Addressing Tribal Needs and Goals

Ensuring the well-being of tribal members, and their families is important to the economic, cultural, health and social welfare of the Redding Rancheria community. The General Membership addresses these needs through the authorization of programs and the approval of budgeted resources for their support. Through adoption of the General Welfare Ordinance the membership has expressed its intent to ensure that programs that eligible programs are afforded special treatment under the general welfare doctrine.

(b) Promotion of the General Welfare

The programs authorized pursuant to the General Welfare Ordinance are intended to promote the general welfare of the Redding Rancheria by ensuring that all eligible members have access to support as needed to address the above purpose, needs and goals associated with those programs. Under the Ordinance the Tribe determines such assistance as is necessary or appropriate in achieving the Tribe's goals of long term self-determination and the preservation of culture and tradition, based on specific findings of the Tribal Council after considering the unique facts, needs and circumstances of the Redding Rancheria and its Members, as well as the means, mechanisms and alternatives available to address those needs.

(c) Specific Findings on Amount; Satisfaction of Lavish or Extravagant Standards

The purpose and amount of benefits available under general welfare programs have been determined by the Tribal Council based on specific findings following a review of the unique facts and circumstances of the Redding Rancheria and its members, including, its culture, traditions and long term Tribal goals. The Redding Rancheria shall take into account factors including, but not limited to, specific member and family needs, Tribal goals and needs, the standard of living among members and in outlying communities, and current and historic economic and non-economic

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barriers faced by members. Where applicable, the Redding Rancheria may include mechanisms such the securing information through General Council meetings, Tribal Council meetings, cultural or traditional gatherings, other meetings with the membership, or by conducting surveys of the membership. Benefit amounts are specifically established at amounts that are expected to be at or below actual need, Based on these unique facts and circumstances, and following appropriate due diligence, the Tribal Council has determined that the benefits provided under this program are not lavish or extravagant. The Tribal Council will periodically review the foregoing factors to ensure that program benefits continue to meet Tribal needs, are at an amount that does not exceed member needs, and are not, in any event, lavish or extravagant.

(d) Coverage under the Redding Rancheria General Welfare Ordinance

The Redding Rancheria intends that all benefits authorized within general welfare programs are authorized pursuant to the Redding Rancheria General Welfare Ordinance, as the same may be amended from time to time, and shall be administered in accordance and compliance therewith. Program benefits are intended to constitute Indian tribal general welfare benefits excluded from taxable income under Internal Revenue Code Section 139E. Program benefits are also intended to meet the IRS "safe harbor" rules for tax free treatment of qualifying benefits under IRS Revenue Procedure 2014-35, as the same may be amended, which are looked to as good faith guidance by the Tribe in applying Code Section 139E pending the issuance of regulations thereunder. All assistance provided in accordance with this policy is intended to qualify for favorable tax treatment to the fullest extent permitted at law.

(e) Coverage under the Redding Rancheria General Welfare Ordinance

This program and its associated benefits are authorized pursuant to the Redding Rancheria General Welfare Ordinance and Chapter TP 1-1100 of the Redding Rancheria Tribal Governmental Policies, as the same may be amended from time to time, and shall be administered in accordance and compliance therewith. Program benefits are intended to constitute Indian tribal general welfare benefits excluded from taxable income under Internal Revenue Code Section 139E. Program benefits modeled after the IRS "safe harbor" rules are also intended to qualify for tax free treatment under IRS Revenue Procedure 2014-35 and Notice 2015-34, as the same may be amended, which are looked to as good faith guidance by the Tribe in applying Code Section 139E pending the issuance of final regulations thereunder. All assistance provided in accordance with this policy is

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intended to qualify for favorable tax treatment to the fullest extent permitted at law.

The provisions of Chapter TP 1-1100 of the Redding Rancheria Tribal Governmental Policies are hereby incorporated by reference and shall apply to the implementation and benefits authorized by this policy.

### SECTION 3: DEFINITIONS

Terms utilized herein shall have the same meaning as defined within the General Welfare Ordinance.

### SECTION 4: DELEGATED AUTHORITY

The Chief Executive Officer (CEO) is hereby delegated all administrative authority to carry out the day-to-day operations of the programs authorized pursuant to the General Welfare Ordinance and in accordance with this policy. Such authority shall include but not be limited to:

- (a) Recommending to the Tribal Council such policy decisions necessary to assure the efficient and effective administration of the program in accordance with its stated purpose.
- (b) Recommending to the Tribal Council such actions related to program services as are appropriate, for which authority has not been delegated within this policy.
- (c) Making provisions for disbursement of program funds in accordance with this policy.
- (d) Coordinating with, obtaining assistance of, and providing administrative direction to third parties engaged by the Redding Rancheria to assist in the administration of the program, including, but not limited to legal counsel, accountants, advisors and consultants.
- (e) Implementing such operating procedures as are required to assure effective day-to-day activities and services in the administration of the program, and publishing information for use by eligible members on how to apply for and use the program.
- (f) Adopting and amending, appropriate forms for application and other documents required for the proper administration of the program.

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- (g) Acting as program administrator and delegating to other officers and employees, in writing, the authority to act and sign on behalf of the CEO for this purpose in order to carry out the program.
- (h) Establishing appropriate training and/or technical assistance programs to assure that eligible members can maximize the benefits of the program.
- (i) Providing information to members regarding their rights and options, taxation issues, the maximization of program benefits and other information pertinent to the program.
- (j) Providing for reports to the Tribal Council as to the status of the program, eligible participants and other information required by the Tribal Council.
- (k) Recommending appropriations for the program in accordance with plans adopted by the Tribal Council and/or the membership.
- (l) Initiating collection and legal proceedings as necessary to protect the Tribe's interests with regard to program funds for which the recipient is in material breach of the program.
- (m) Provide for tax reporting to the extent required under applicable law for any excess benefits as discussed in Section 10(b).
- (n) Provide Maintenance of records, for each year of the program for a period of not less than six years following the end of the Calendar Year for which benefits are paid.
- (o) Provide for procedures and additional substantiation requirements as may be required to assure compliance with Internal Revenue Code, Section 139E and the Redding Rancheria General Welfare Ordinance of 2015.

**SECTION 5: AUTHORIZED PROGRAMS AND SERVICES**

There is hereby authorized such activities as are required to assure that programs authorized pursuant to the General Welfare Ordinance, and in accordance with this policy are properly documented and justified, and remain in compliance with authorizing policies.

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SECTION 6: ELIGIBILITY

(a) Eligibility Restrictions

Specific eligibility criteria for program benefits shall be determined by the Tribe in accordance with this Section 6; provided that in no event will tax free general welfare benefits be provided to a class of individuals outside of those permitted under Code Section 139E, IRS Revenue Procedure 2014-35 or subsequent guidance issued hereafter.

(b) General Restrictions

Without limitation of the following restrictions, all benefits under this policy shall comply with the provisions of Section 1002(1) and 1003(1) of the Redding Rancheria General Welfare Ordinance.

- (1) The program shall be administered under specified guidelines and shall not discriminate in favor of members of the governing body in violation of Code Section 139E(b)(1).
- (2) Benefits must be available to any tribal member who meets the program guidelines.
- (3) Benefits cannot be lavish or extravagant.
- (4) Benefits cannot constitute compensation for services.
- (5) Benefits must comply with the Redding Rancheria General Welfare Ordinance.
- (6) All program benefits are subject to funding and budget limitations.

SECTION 7: BENEFITS NOT AN ENTITLEMENT

- (a) No entitlements intended. The programs authorized pursuant to the General Welfare Ordinance and in accordance with this policy are not entitlement programs. The Tribe has made provision to fund the program by establishing the funds for the program within the Tribal budget, but the program may be changed or eliminated as determined to be necessary or appropriate and no tribal member or his or her estate has any vested interest in potential or unused benefits available under the programs. Neither approval of applications nor receipt of benefits of program resources creates a vested right in the applicant, the members of the applicant household, their estate or their heirs at law.

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- (b) The programs shall be unfunded for tax purposes. The programs will be administered in a manner to avoid premature taxation through the IRS doctrines of constructive receipt and economic benefit. The establishment of any fund or accounts by the Tribe to budget for program benefits shall not create any legally enforceable right to specific funds or assets by any particular member or program participant. All benefits are paid solely from Tribal assets and all such assets or funds referred to herein shall remain solely assets of the Tribe until actual payment.
- (c) Assistance payments under this policy are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the tribal member or his or her beneficiaries.

#### SECTION 8: LIMITATION OF BENEFITS

- (a) Benefits amounts authorized pursuant to this the General Welfare Ordinance and this policy are generally based on estimates of the total costs typically incurred for the purpose for which assistance is provided, and are set at amounts that are expected to be equal to or lower than the recipient's total actual assistance needs. Except for benefits that are not based on cost, such as certain incentive payments, in the unusual event that program assistance payment(s) exceed the actual cost for the program purpose, the recipient must return the excess to the Tribe, by December 31. Any excess that is not returned will be reported as taxable income to the extent required by, and on forms prescribed under, applicable requirements of the Internal Revenue Code. The Tribal Council or its designee may adopt forms, rules and procedures from time to time to substantiate program compliance. These procedures and forms may change as additional guidance becomes available under Code Section 139E.
- (b) Amounts provided under this policy are limited to the amounts appropriated for the programs and to such limitations as shall be set forth within the Tribal budget.
- (c) The Redding Rancheria shall not be liable for continuation of this program beyond budgetary resources appropriated by the Tribal Council or the voting members of the Redding Rancheria.

#### SECTION 9: TAXATION

- (a) Taxes. This program is approved under the provisions of and intended to qualify for treatment under the Redding Rancheria General Welfare Ordinance of 2015, as may be later amended. The Tribe intends that the services and or benefits derived from the program shall qualify for favorable



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tax treatment to the fullest extent permitted under the general welfare doctrine and applicable law, including without limitation Section 139E of the Internal Revenue Code and Revenue Procedure 2014-35, as applicable.

- (b) Although the Tribe intends the most favorable income tax treatment available under federal and state tax laws, the Tribe will not provide or pay for professional assistance to complete tax returns or if participants are audited or reviewed by federal or state taxing authorities. The Tribe will not be responsible for or pay any tax penalties or interest incurred by participants in connection with their participation in the program. It is the responsibility of each recipient to consult his or her own tax advisor regarding the taxability or reporting obligations of program benefits.

#### SECTION 10: BREACH OF POLICY AND TAX REPORTING

- (a) Remedies. In the event a member is in material breach of this policy, including the receipt of any assistance payments not used in accordance with the policy or overpayment of assistance, for which repayment is required by this policy, the program benefits will be deemed a loan and the Redding Rancheria shall have the right to reimbursement of amounts made available under this policy. Such reimbursement shall be enforceable under the laws of the Redding Rancheria, including offset of any payments owed to the member by the Redding Rancheria, including per capita payments.
- (b) Tax Reporting. To the extent that a member is in material breach of an authorized program or this policy or a determination is made that services or benefits provided do not constitute assistance that qualifies for favorable tax treatment under the general welfare doctrine or applicable law, then the Administrator shall file any required report(s) to the appropriate taxing authorities regarding all such amounts as are not reimbursed within the tax year pursuant to (a) above.

#### SECTION 11: PARTICIPANT RESPONSIBILITIES

Participants in the general welfare programs are responsible to:

- (a) Carry out such responsibilities as are specific to each program.
- (b) Provide such information to the Redding Rancheria as is requested to evaluate the needs of the program, including responding to surveys related to use of the program and benefits derived therefrom.

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- (c) Maintaining appropriate records or receipts to substantiate that benefit amounts provided by the program were expended for eligible program purposes.
- (d) In the unusual event that program benefits, awarded on a cost basis, exceed the participant's actual cost, the participant must return the excess by December 31. In the event that such excess is not returned, the Tribal member must promptly notify the Tribe of any excess that was not returned. The Participant understands that retaining excess assistance payments may result in the exercise of all Tribal remedies set forth herein including the reporting of taxable income.
- (e) If required by future IRS guidance or policy of the Tribe, provide additional records or proof of program compliance.

#### SECTION 12: EVALUATION

The Chief Executive Officer shall provide for an evaluation of the programs authorized pursuant to the General Welfare Ordinance at reasonable intervals following adoption their adoption and implementation. The evaluation shall include an assessment of the level needs and costs typical for the purposes for which the benefits are intended.

#### SECTION 13: NO WAIVER OF TRIBAL SOVEREIGN IMMUNITY

In establishing the programs authorized pursuant to the General Welfare Ordinance and this policy, the Tribe has not waived its tribal sovereign immunity from unconsented suit and has not consented to suit or the jurisdiction of any state or federal court or administrative body.

Legislative History:

Originally Adopted by Tribal Council Resolution # 037-05-12-15, dated May 12, 2015.