

## ORDINANCE

### 16.05. AMOUNT OF LIABILITY.

(1) Liability of any tribal body or its officers, employees or agents acting within the scope of their employment or duties on claims within the scope of 16.01 to 16.27 shall not exceed:

(a) \$100,000 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence.

(b) \$100,000 to any claimant as general and special damages for all other claims arising out of a single accident or occurrence unless those damages exceed \$100,000, in which case the claimant may recover additional special damages, but in no event shall the total award of special damages exceed \$100,000.

(c) \$500,000 for any number of claims arising out of a single accident or occurrence.

(2) No award for damages on any claim under this Ordinance shall include punitive damages. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

(3) Where the amount awarded to or settled upon multiple claimants exceeds \$500,000, any party may apply to the Siletz Court of Appeals to apportion to each claimant the proper share of the total amount limited by subsection (1) of this section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to the claimant bears to the aggregate awards and settlements for all claims arising out of the occurrence.

(4) Liability of any tribal body and one or more of its officers, employees or agents, or two or more officers, employees or agents of a tribal body, on claims arising out of a single accident or occurrence, shall not exceed in the aggregate the amounts limited by subsection (1) of this section.

(5) To the extent the Tribe or any tribal body possesses third party insurance coverage and is not self-insured, which insurance covers a particular claim made pursuant to this Ordinance, the maximum liability to which the tribal body may be subjected under this Ordinance will be the policy coverage limits available under such insurance. Third party insurance coverage and policy limits will be disclosed by the Tribe or tribal body to a claimant under this Ordinance, upon written request.

### 16.07. NOTICE OF CLAIM; TIME OF NOTICE; TIME OF ACTION.

(1) No action arising from any act or omission of a tribal body or an officer, employee or agent of a tribal body within the scope of 16.01 to 16.27 shall be maintained unless notice of claim is given as required by this section.

(2) Notice of claim shall be given within the following applicable period of time, not including the period, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity:

(a) For wrongful death, within one year after the alleged loss or injury.

(b) For all other claims, within 180 days after the alleged loss or injury.

(3) Notice of claim required by this section is satisfied by:

(a) Commencement of an action in tribal court on the claim by or on behalf of the claimant within the applicable period of time provided in subsection (2) of this section; or

(b) Payment of all or any part of the claim by or on behalf of the tribal body at any time.

(c) A written notice of claim from a claimant or representative of a claimant to the General Manager of the Tribe containing:

(i) A statement that a claim for damages is or will be asserted against a tribal body or an officer, employee or agent of the Tribe;

(ii) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant; and

(iii) The name of the claimant and the mailing address to which correspondence concerning the claim may be sent.

(4) Notice of claim shall be given by certified mail or personal delivery to the General Manager of the Tribe only. A copy of the claim must be served on the tribal body or on the tribal body, if known, in which the employee, officer or agent is employed, by certified mail with return receipt requested.

(5) In an action arising from any act or omission of a tribal body or an officer, employee or agent of a tribal body within the scope of 16.01 to 16.27, the plaintiff has the burden of proving that notice of claim was given as required by this section.

(6) An action arising from any act or omission of a tribal body or an officer, employee or agent of the Tribe within the scope of this Ordinance shall be commenced within two years after the event causing the alleged loss or injury occurred.

### 16.11. INSURANCE AGAINST LIABILITY; SELF-INSURANCE ALLOCATION.

(1) The Tribe may procure third party insurance against liability of the Tribe, tribal bodies and its officers, employees and agents acting within the scope of their employment or duties, and in addition to, or in lieu thereof, may establish a self-insurance fund against such liability of the Tribe, tribal bodies and its officers, employees and agents. To the extent the Tribe or a tribal body is covered by third party insurance for any acts or omissions within the scope of this Ordinance, the liability limits for such acts or omissions shall be the policy limits of such third party insurance coverage.

(2) When a tribal body or employee, officer or agent of a tribal body is found liable under this Ordinance, damages are awarded to the claimant and the claim is covered by the Tribe's self-insurance coverage and not by third party insurance coverage, the Tribal Council may direct, in appropriate cases, that the Tribe's self-insurance fund be replenished from the budget of the tribal body which was found liable in that case.

### 16.13. THE TRIBE SHALL INDEMNIFY TRIBAL OFFICERS; PROCEDURE FOR REQUESTING COUNSEL; EXTEND OF DUTY OF THE TRIBE; OBLIGATION FOR JUDGMENT AND ATTORNEY FEES.

(1) The Tribe shall defend, save harmless and indemnify any of its officers, employees and agents, whether elective or appointive, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty.

(2) The provisions of subsection (1) of this section do not apply in case of malfeasance in office or willful or wanton neglect of duty.

(3) If any civil action, suit or proceeding is brought against any tribal officer, employee or agent which on its face falls within the provisions of subsection (1) of this section, or which the tribal officer, employee or agent asserts to be based in fact upon an alleged act or omission in the performance of duty, the tribal officer, employee or agent may, after consulting with the General Manager file a written request to the Tribal Council for assistance of counsel. The Tribal Council will appoint counsel to represent the officer, employee or agent in that action, suit or proceeding. The appointed counsel shall thereupon appear and defend the officer, employee or agent unless, after reasonable investigation, the appointed counsel finds that the claim or demand does not arise out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty. In such case, the appointed counsel shall report such findings to the Tribal Council, who shall then decide whether or not to reject defense of the claim by the Tribe on the employee, officer, or agent's behalf.

(4) Any officer, employee or agent of the Tribe against whom a claim within the scope of this section is made shall cooperate fully with the appointed counsel, the General Manager, and other designated or delegated persons in the defense of such claim. If the appointed counsel, after consulting with the General Manager, determines that such officer, employee or agent has not so cooperated or has otherwise acted to prejudice defense of the claim, the appointed counsel may at any time report such actions to the Tribal Council, who may reject the defense of the claim by the Tribe on behalf of the employee, officer or agent.

(5) If the Tribal Council rejects defense of a claim under subsections (3) or (4) of this section, no tribal funds shall be paid in settlement of said claim or in payment of any judgment against such officer, employee or agent. Such action by the Tribal Council shall not prejudice the right of the officer, employee or agent to assert in appropriate proceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the performance of duty, that the act or omission complained of did not amount to malfeasance in office or willful or wanton neglect of duty, or that

(See Ordinance on page 22)