

# OMAHA TRIBAL CODE (2013)

## TITLE 32. ENTERPRISE BOARD

Source: Omaha Tribal Council Resolution Nos. 94-46 (12-3-93) and 98-121 (7-29-98).

### CHAPTER 1. GENERAL PROVISIONS

#### SECTION 32-1-1. Constitutional Authority for the Enterprise Board.

The Tribal Council of the Omaha Tribe of Nebraska has the inherent sovereign and constitutional power to control and manage the economic affairs of the Tribe and to establish and operate such commercial enterprises as it may deem proper and to regulate those who transact business for the purpose of conducting commerce under regulations promulgated herein on territories under the jurisdiction of the Omaha Tribe of Nebraska. It is hereby declared by the Tribal Council that the conduct of commerce on said territories is vital to the economic security, political integrity and general health and welfare of the Tribal members. Therefore, to protect these interests of the Tribe, a commission to be known as the Enterprise Board is hereby chartered as an authorized independent commission with those powers expressly delegated by the Tribal Council.

#### SECTION 32-1-2. Purpose.

To create a Commission to be known as the Enterprise Board whose function will be to incorporate new businesses on the Reservation, and to regulate commerce on the Reservation.

#### SECTION 32-1-3. Definitions.

(a) "*Commissioner of Business Affairs*" and "*Commissioner*" shall have the meaning set forth in Section 32-2-1.

(b) "*Corporation*" shall mean the Tribal or non-Tribally owned public, or private corporation.

(c) "*Court*" shall mean the Tribal Court or any United States District Court.

(d) "*Domestic corporation*" shall mean every corporation organized under the laws of the Tribe.

(e) "*Enterprise Board*" shall mean the Omaha Tribe of Nebraska Enterprise Board.

(f) "*Foreign corporation*" shall mean any corporation organized under the law of another Tribe, a state of the United States or another country and also organized or licensed under the laws of the Tribe.

(g) "*General Counsel*" shall mean the general counsel to the Tribe.

(h) "*Ordinance*" shall mean the Omaha Tribe of Nebraska Enterprise Board Ordinance.

(i) "*Private corporation*" shall include every company or association, except public corporations.

(j) "*Process*" shall mean any statutory notice or demand required or permitted to be served on a natural person or a corporation and includes a summons in a civil action and any process which may be issued in any action or proceeding in any court.

(k) "*Public corporation*" shall mean a corporation wholly owned by the Tribe, formed solely for public and governmental purposes or for enterprise adventures of the Tribe.

(l) "*Reservation*" shall mean the territory within the exterior boundaries of the Omaha Indian Reservation (including the Blackbird Bend and other tribal land located east of the Missouri River) as set forth in the Omaha Treaty of March 16, 1854, as amended by the treaty of March 6, 1865, and to such other lands without these boundaries as may have been or may hereafter be added to the Reservation, or held in trust for the Tribe under any law of the United States or otherwise.

(m) "*Tribe*" shall mean the Omaha Tribe of Nebraska.

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## SECTION 32-1-4. Rights, Privileges and Immunities.

The Enterprise Board may assume any or all of the Tribe's rights, privileges and immunities (including, without limitation, sovereign immunity) concerning federal and state taxes, and jurisdiction to the same extent that the Tribe would have such rights, privileges and immunities if it were to engage in the activities undertaken by the Enterprise Board.

## SECTION 32-1-5. Good Faith.

Notwithstanding any provisions contained in this Title, all actions taken by the Enterprise Board as a whole and by each individual Commissioner in his or her capacity as an Enterprise Board member shall be made in good faith. Failure to act in good faith shall result in just cause for removal pursuant to Section 32-2-3.

## SECTION 32-1-6. Restrictions on Corporate Activity.

No Commissioner may sit on the board of directors of any Tribally-chartered public corporation.

## CHAPTER 2. NOMINATIONS FOR COUNCIL MEMBERSHIP; MEMBERSHIP; REMOVAL

### SECTION 32-2-1. Membership.

The Enterprise Board shall be a three-member commission with each member having the title of Commissioner. The Commissioner of Business Affairs, who shall be a Commissioner so named by the Tribal Chairman or by vote of the members of the Enterprise Board shall chair the Enterprise Board, ensuring its lawful activity. Each Commissioner shall be a Tribal member, and only one of the three Commissioners may be a Tribal Council member. The Enterprise Board shall keep accurate records. Such records shall be prima facie evidence of the facts therein stated.

### SECTION 32-2-2. Nominations for Enterprise Board Membership.

The Tribal Chairman shall nominate two individuals for a four-year term and one individual for a three-year term and the Tribal Council shall confirm the nominations. The initial Commissioners shall serve until December 1, 1997 and December 1, 1996, respectively. Prior to the expiration of each term nominees will be submitted for ratification the Tribal Council. Thereafter, each Commissioner shall serve four-year terms.

### SECTION 32-2-3. Removal.

Any Commissioner may be removed from office for just cause pursuant to a proceeding commenced in the Tribal Court by a majority vote of the Tribal Council if the Tribal Council determines that the Commissioner is engaged in fraudulent or dishonest conduct or abuse of authority or discretion with respect to the Enterprise Board and further finds that removal is in the best interest of the Enterprise Board.

## CHAPTER 3. ENTERPRISE BOARD POWERS

### SECTION 32-3-1. Regulate Business.

The Enterprise Board shall have the power to administratively regulate domestic and foreign businesses other than any business regulated by the Gaming Commission. The Enterprise Board shall be a political body which is a corporation or agency of the Tribe with the right to defend itself in any legal action before the Court. In exercising any power granted, each Commissioner shall be; immune from any liability except from liability which results from, the willful, knowledgeable or grossly negligent performance of his or her duties.

### SECTION 32-3-2. Construction.

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The Enterprise Board shall have the power to approve the construction of any business facility to ensure that any new construction comports with any existing building codes or schemes.

### **SECTION 32-3-3. Issue Licenses.**

The Enterprise Board shall have the power to:

- (a) issue licenses and/or permits and establish fee schedules, to be approved by the Tribal Council, for said license or permits for the operation of business entities in territories under the jurisdiction of the Tribe and perform those actions required of it pursuant to the provisions of this Title 32, Title 33, Title 34 and Title 27; and
- (b) employ, as necessary, qualified individuals who shall be employees of the Enterprise Board; and

### **SECTION 32-3-4. Change of Name; External Services.**

The Enterprise Board shall have the power to require the change of the name of any domestic [or foreign] business to ensure that said business does not operate' under the name Omaha Tribe; Omaha Nation, Omaha Reservation or any other name likely to associate the business with the Tribe or any Tribal members, and to authorize any business to apply to any external jurisdiction for the provision of services of any type, including workmen's compensation and unemployment compensation.

### **SECTION 32-3-5. Uniform System of Records and Accounting.**

The Enterprise Board shall maintain its financial records under the financial record system established by the Treasurer for the Tribe.

### **SECTION 32-3-6. Administrative Regulations.**

The Enterprise Board shall have the power to propose administrative rules and regulations consistent with the Tribal Code. All proposed rules and regulations shall be submitted to the Tribal Council for approval and adoption. Enforcement responsibility shall rest with the general Counsel at the request of the Enterprise Board.

## **CHAPTER 4. MISCELLANEOUS**

### **SECTION 32-4-1. Severability.**

If any provision of this Title 32 or the application thereof to any person, business, corporation or circumstances is held invalid, the invalidity shall not affect other provisions or application of the chapter which can be given effect without the invalid provision or application and to this end the provisions of this Chapter are declared severable.

### **SECTION 32-4-2. Jurisdiction.**

The Tribal Court is hereby granted subject matter jurisdiction for any cause of action that arises from this Title 32. Nothing in this Title 32 shall be construed as a waiver of sovereign immunity of the Tribe or of the Enterprise Board in any state or federal court of competent jurisdiction.

### **SECTION 32-4-3. General Counsel.**

The General Council shall not represent the individual interest of the Enterprise Board in any matter before the Tribal Court, but shall represent the Enterprise Board as a whole in any case where the cause of action arises from the performance of a governmental function or where the judgment would, expend itself on the property of the Tribe.

### **SECTION 32-4-4. Applicability, of Tribal Code.**

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Each domestic and foreign business or corporation conducting business under the laws of the Tribe shall be subject to all applicable rules and regulations, including but not limited to taxation now in force and effect or hereafter in force and effect.

### **SECTION 32-4-5. Criminal Liability for Certain Actions.**

No person, business or corporation doing business on territories under the jurisdiction of the Tribe shall offer or receive any kick-back or bribe or attempt to influence or deceive any decision, political or otherwise, of the Enterprise Board or Tribal Council or other officer or appointee of Tribal government and any person, business or corporation suspected of doing so may be charged with violating the criminal law of the Tribe.

### **SECTION 32-4-6. Cease and Desist Orders; Injunctions.**

(a) Whenever it appears to the Commissioner of Business Affairs that any person or business has engaged in any practice constituting a violation of this Ordinance or any rule or order hereunder, the Commissioner of Business Affairs shall immediately report the facts to the General Counsel who shall petition any justice of the Tribal Court for an order requiring the person or business to cease and desist from any violation. The order shall be calculated to give reasonable notice of the rights of the person or business to request a hearing thereon and shall state the reason for the entry of the order. A hearing shall be held no later than seven days after the entry of the cease and desist order. If the person or business to whom a cease and desist order is issued, fails to appear at the hearing after being duly notified, the person or business shall be deemed in default and the proceeding may be determined against such person or business upon consideration of the cease and desist order the allegations of which may be deemed to be true.

(b) In any proceeding under the provisions of this Chapter, including those where injunctive relief is sought, the Tribal Court shall grant precedence to this Chapter's cases over all other cases upon the court calendar. These cases shall not be continued without the consent of the Tribal Council, except upon good cause shown to the court, and then only for the reasonable length of time necessary in the opinion of the court, to protect the rights of the defendant party.