

Title 12

Economic Development Authority

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Chapter 12.01

General Provisions

Sections:

12.01.01 Title

12.01.02 General Purposes

12.01.03 Additional Purposes in establishing the Authority

Section 12.01.01 Title

The Title shall be known as the Jamestown S' Klallam Economic Development Authority

Section 12.01.02 General Purposes

The primary purposes of the Authority are to promote and protect the general welfare of the Tribe and its citizens by:

- A. Reducing unemployment and underemployment through the provision of career opportunities paying a wage sufficient to support the employee and their family;
- B. Raising revenues to support the delivery of essential government services by the Tribe to its citizens, especially those too young or too old to work or those in school or training programs; and
- C. Providing training, education and mentoring opportunities, related to economic and business development, to enable citizens of the Tribe to establish their own businesses.

Section 12.01.03 Additional Purposes in establishing the Authority

Establishing Authority:

- A. Provide for a more efficient and effective economic development program by centralizing control and oversight of enterprises and business activities of the Tribe ("Tribal Enterprises") over which the Authority is given jurisdiction by the Tribal Council;
- B. Delegate a portion of the oversight responsibilities exercised by the Tribal Council over the designated Tribal Enterprises;
- C. Delegate specific substantial governmental functions and powers of the Tribal Council to the Authority; and
- D. Segregate Tribal business assets and liabilities from Tribal governmental assets and liabilities.

Chapter 12.02

Existence

Sections:

12.02.01 Existence

Section 12.02.01 Existence

The Authority shall exist until it is dissolved by the Tribal Council. Upon dissolution, all of the Authority's assets and liabilities shall revert to the Tribe.

Chapter 12.03

Authorization, Legal Status, Ownership and Funding

Sections:

12.03.01 Authorization, Legal Status, Ownership and Funding

12.03.02 Management of the Authority

Section 12.03.01 Authorization, Legal Status, Ownership and Funding

The Tribe is a federally recognized Indian Tribal Government and has been determined by the U.S. Department of the Treasury, Internal Revenue Service ("IRS") to exercise governmental functions and powers (Rev. Proc. 2002-64, 2002-42 IRB 717, 719 (Oct. 21, 2002)). Inherent in the sovereign power of the Tribe is its ability to delegate certain of these functions to one or more of its political subdivisions, such as the Authority created by this Code. Article VII (7), Section 1 (i) of the Tribe's Constitution stipulates that the Tribal Council has the following functions and powers, among others:

- A. To charter and regulate corporations, cooperatives, associations, special districts, educational and charitable institutions, political subdivisions and any other organizations;
- B. To manage all economic affairs and enterprises of the Tribe; and
- C. To levy taxes on all persons, property and activities within the Tribe's jurisdiction.

The legal status of the Authority is that of a subordinate economic development entity and political subdivision of the Tribe. The Tribe's control over the Authority shall be exercised in accordance with this Code.

Funding for the operations of the Authority will be authorized and appropriated through the Tribe's annual budget process. The staff of the Authority will be responsible for preparing the budget and submitting it, with justifications, to the Tribal Council for approval.

Section 12.03.02 Management of the Authority

The activities of the Authority shall be managed and conducted by a Board of Directors (" Authority Board") consisting of five (5) voting members duly appointed by the Tribal Council to serve staggered terms, ranging from

one (1) to five (5) years, as determined by the Tribal Council. At least three (3) members of the Board shall be enrolled citizens of the Tribe over the age of eighteen (18) and the other two (2) directors shall be selected for their economic development, or business expertise and other relevant experience. The Authority Board may also have two additional non-voting directors selected for their business expertise and other relevant experience duly appointed by the Tribal Council. Tribal staff may serve as ex-officio members of the Board.

- A. All Directors shall serve at the pleasure of the Tribal Council and may be removed by the Tribal Council at any time with or without cause. If any duly elected Director is unable or unwilling to serve or to complete their designated term, the Tribal Council shall appoint another individual to serve in their place;
- B. The Authority Board shall draft the By-laws of the Authority, subject to final approval of the Tribal Council, governing the election of officers, Board procedures, and the conduct and management of the Authority's activities.

Chapter 12.04

Governmental Functions and Powers

Sections:

12.04.01 Governmental Functions and Powers

Section 12.04.01 Governmental Functions and Powers

The Tribe has delegated to the Authority certain of its governmental functions and powers. These functions and powers may be exercised relative to those Tribal Enterprises and business or economic development activities over which the Authority has been given jurisdiction, as determined, from time to time, by the Tribal Council. Subject to the foregoing limitations, the Authority shall have the following governmental powers:

- A. To impose and collect business income or franchise taxes, sales and use taxes, and other business-related taxes on any persons (including, but not limited to certain Tribally-chartered business entities), transactions or activities within the taxing jurisdiction of the Tribe, as provided for in Tribal Codes;
- B. To impose and collect service and licensing fees on certain Tribal Enterprises and other business enterprises operating within the regulatory jurisdiction of the Tribe, as provided for in Tribal Codes;
- C. To regulate economic and business development activities through licensing of specific businesses located or operated on Tribal land, as provided for in Tribal Codes; and
- D. To facilitate the organization, creation, or establishment of business entities under federal, state, or Tribal law (including corporations, partnerships, joint ventures, and limited liability companies), for the purpose of conducting any activity or venture that furthers the economic development of the Tribe and its citizens.

Chapter 12.05

Economic and Business Development Powers

Sections:

12.05.01 Economic and Business Development Powers

Section 12.05.01 Economic and Business Development Powers

Subject to the final approval of the Tribal Council and the limitations set forth in Chapter 12.07 of this Code, the Authority shall have the following economic and business development powers, subject to any applicable limitations in Tribal, state or federal law (including any IRS rulings or other applicable guidance):

- A. To promote the economic development of the Tribe;
- B. To generate revenues for use by the Tribe in providing essential governmental services;
- C. To engage in any type of lawful business enterprise or venture;
- D. To appoint or remove (or to recommend the appointment or removal of) board members for the Tribal Enterprises under its jurisdiction;
- E. To maintain communication by having at least one member of the Authority Board serve on the board of each Tribal Enterprise under its jurisdiction, with due consideration given to any limitations imposed under Section 8(A) of the Small Business Act on any such appointments;
- F. To engage in any activity or business venture that will further the economic development of the Tribe and its citizens so long as the activity or venture is not inconsistent with law or with any provisions of this Code;
- G. To purchase, take by gift, bequest, or otherwise own, hold, manage, acquire, develop, operate and dispose of property of every description, real and personal; provided that no action shall be taken by or on behalf of the Tribe or the Authority which in any way operates to destroy or injure the lands or natural resources of the Tribe;
- H. To borrow and loan money and incur obligations for any lawful purpose from or to any business, entity or government authority or agency and execute and deliver all documents in connection therewith;
- I. To adopt, use and alter at its discretion, a seal;
- J. To enter into, make and perform contracts, leases, and agreements of every kind and description, not inconsistent with law or with any provisions of this Code, with any person, association, corporation or other entity, with any municipality, county, or state including the State of Washington, or the United States of America, or other governmental entity or agency, including arrangements for the provision of services;
- K. To pledge or assign personal property or future income due or to become due to the Authority to the extent not prohibited by law;
- L. To grant security interests in any property to the extent not prohibited by law;
- M. To hire and employ agents, professional advisors and employees;

- N. To deposit funds, from whatever source derived, in any national, savings, or state bank that is insured by the Federal Deposit Insurance Corporation or a member bank of the Federal Reserve provided that whenever funds deposited with a bank exceed the amount of federal deposit insurance coverage, a bond or pledged securities shall be obtained;
- O. To exercise such further incidental powers, consistent with applicable federal or tribal law, as may be necessary to the conduct of business; and
- P. To purchase real and personal property and all other assets which are required to meet the purposes of the Authority.

Chapter 12.06

Privileges and Immunities

Sections:

12.06.01 Privileges and Immunities

Section 12.06.01 Privileges and Immunities

In the exercise of its powers, the Authority shall have all of the rights, privileges and immunities of the Tribe as a federally recognized American Indian Tribal Government including but not limited to sovereign immunity from suit, to the same extent that the Tribe would have such rights, privileges, and immunities if it engaged in the activities undertaken by the Authority in the Tribe's own name, subject to the following limitations:

- A. No waiver of the Authority's or Tribe's immunity shall be implied; and
- B. The Authority's immunity from suit shall not extend to actions against it or its officers or directors brought by the Tribe itself, provided such suit is brought solely in the name of, and for the sole benefit of, the Tribe.

Chapter 12.07

Limitations on Powers

Sections:

12.07.01 Limitations on Powers

Section 12.07.01 Limitations on Powers

The Authority shall have no power to:

- A. Expressly or by implication enter into any agreement of any kind on behalf of the Tribe or any citizen of the Tribe;
- B. Pledge the credit of the Tribe;
- C. Dispose of, pledge, or otherwise encumber real or personal property of the Tribe, except that the Authority shall have the power to encumber real property pursuant to the terms of written lease agreements between the Tribe and the Authority;
- D. Waive any right, privilege, or immunity of, or release any obligation owed to, the Tribe; or
- E. Enter into any sublease or other encumbrance or instrument respecting lands leased to the Authority by the Tribe without the express written approval of the Tribal Council unless such power is reflected in the written lease agreements between the Tribe and the Authority.

The Authority must secure the prior written consent of the Tribal Council in order to take any of the following actions:

- A. Merge into another entity;
- B. Dissolve the Authority;
- C. Sell or otherwise dispose of all or substantially all of the Authority's assets, other than in the usual and regular course of its business;
- D. Make any expenditure or incur any debt in excess of five hundred thousand (\$500,000); or
- E. Grant any limited or transaction-specific waiver of the Authority's sovereign immunity.

The following actions must be ratified by the Tribal Council before they become effective:

- A. Adoption of a business development plan;
- B. Adoption of the Authority's capital and operating budgets; and
- C. Adoption of By-laws for the Authority.

Chapter 12.08

Ownership and Transfers of Income

Sections:

12.08.01 Ownership and Transfers of Income

Section 12.08.01 Ownership and Transfers of Income

The Tribe has the sole proprietary interest in the Authority's activities. Upon request of the Tribal Council, the Authority may transfer a portion of its surplus revenues or funds to the Tribe so long as such transfers are consistent with the Authority's financial condition and in compliance with its capital and operating budgets. The Authority shall develop a Strategic Financial Plan to determine when the surplus revenues exist. This plan must be approved by the Board of Directors, and adopted by the Tribal Council. The Authority shall reinvest any and all revenues or funds, not so transferred to the Tribe, in the Authority's businesses, growth opportunities, and facilities.

Chapter 12.09

Accounts

Sections:

12.09.01 Accounts

Section 12.09.01 Accounts

The Authority shall maintain accurate and complete accounts of its financial affairs (accounting and financial records), which shall clearly show all assets and liabilities, credits, debts, pledges, and assignments of the Authority. The Authority shall furnish an annual balance sheet, income statement, and quarterly reports of the financial affairs of the Authority to the Tribal Council. The Tribal Council may ask the Authority to provide additional or more frequent financial reports at any time throughout the fiscal year. In addition, the Authority shall have an annual independent financial audit conducted, which shall be submitted to the Tribal Chief Financial Officer.

Chapter 12.10

Amendments to this Code

Sections:

12.10.01 Amendments to this Code

Section 12.10.01 Amendments to this Code

May be proposed by the Authority Board, but such proposed amendments must be approved by majority vote of the Tribal Council before they become effective.

Chapter 12.11

Effective Date

Sections:

12.11.01 Effective Date

Section 12.11.01 Effective Date

This Code shall be effective from and after the date of its approval and certification by the Tribal Council, provided that an initial Board of Directors is duly appointed by the Tribal Council on that date.

Chapter 12.12

Acknowledgment of Authority's Status by Federal Government

Sections:

12.12.01 Acknowledgement of Authority' s Status by Federal Government

Section 12.12.01 Acknowledgement of Authority' s Status by Federal Government

Under Federal tax law and IRS regulations, the Tribe is required to request a private letter ruling from the IRS in order to confirm the status of the Authority as a political subdivision of the Tribe. This is necessary in order for the Authority to be entitled to the same tax treatment as a political subdivision of a state as specified under Internal Revenue Code Section 7871. The Tribal staff is hereby directed to pursue such an IRS ruling for the Authority in an expeditious manner.

Further, in order to facilitate processing of the request for the IRS private letter ruling, the Tribal staff is directed to secure a letter from the Department of Interior, Bureau of Indian Affairs, finding that by means of this Code, the Tribe has made an effective delegation of one or more substantial sovereign powers to the Authority.

Chapter 12.13

Codification

Sections:

12.13.01 Date of Codification

Section 12.13.01 Date of Codification

This Title was codified by Resolution #04-05 on February 3, 2005. Amended on August 26, 2009