



# Saint Regis Mohawk Tribe

Chief Beverly Cook  
Chief Michael Conners  
Chief Ronald LaFrance, Jr.  
Sub-Chief Kenneth Jock  
Sub-Chief Agnes Jacobs  
Sub-Chief Benjamin Herne

## TRIBAL COUNCIL RESOLUTION

2022 - 09

### TO ADOPT A BUSINESS ORGANIZATIONS ORDINANCE.

**WHEREAS**, the Saint Regis Mohawk Tribal Council (the “Tribal Council”) is the duly recognized governing body of the Saint Regis Mohawk Tribe (the “Tribe”) and is responsible for the health, safety, education and welfare of all community members; and

**WHEREAS**, the Tribal Procedures Act (TCR 2013-32) provides that Tribal Council shall exercise all executive and legislative powers, that include but are not limited to the power to take any action that may be necessary to carry out the sovereign authority of the Tribe, which is the authority to take any and all actions necessary to promote the health, safety, education and general welfare of the Tribe and its members; and

**WHEREAS**, the ability to exercise the Tribe’s sovereign authority necessarily requires the development of our economy, so the Tribe may fund policies and initiatives benefitting Tribal Membership; and

**WHEREAS**, in order to facilitate economic development within the Tribe’s Reservation, the Tribe desires to provide tribal members with the opportunity to form various types of business organizations under Tribal law; and

**WHEREAS**, the Office of General Counsel, working with outside counsel, has prepared the Saint Regis Mohawk Tribe Business Organizations Ordinance (the “Ordinance”); and

**WHEREAS**, pursuant to the Tribal Procedures Act Section X (3), the Office of General Counsel has met all of the requirements necessary for Tribal Members to publicly review and comment on the proposed Ordinance; and

**WHEREAS**, the Ordinance will allow Tribal Members to form for profit and not for profit entities under Tribal law.



**NOW THEREFORE BE IT RESOLVED**, the Saint Regis Mohawk Tribal Council hereby adopts the "Saint Regis Mohawk Tribe Business Organizations Ordinance" as attached hereto, and effective upon the date of this Resolution.

**THE SAINT REGIS MOHAWK TRIBAL COUNCIL**

Beverly Cook

Beverly Cook,  
Tribal Chief

Michael Conners

Michael Conners,  
Tribal Chief

Ben LaFrance Jr.

Ron LaFrance, Jr.,  
Tribal Chief

**CERTIFICATION:** This is to certify that the Saint Regis Mohawk Tribal Council pursuant to the authority vested therein duly passed the above resolution.

Summer Bero

Summer Bero, Tribal Clerk

Enniskay Feb. 28, 2022

Date



**SAINT REGIS MOHAWK TRIBE  
BUSINESS ORGANIZATIONS ORDINANCE**

**TCR 2022- 09**

**TABLE OF CONTENTS**

**TITLE I. GENERAL PROVISIONS**

**Chapter 1. General Provisions**

- 1.1 Short Title
- 1.2 Purpose
- 1.3 Definitions
- 1.4 Applicability of Ordinance Generally
- 1.5 Applicable Law
- 1.6 Amendment or Repeal of this Ordinance
- 1.7 Sovereign Immunity

**Chapter 2. Formation**

- 2.1 Incorporators
- 2.2 Articles of Incorporation; filing and contents
- 2.3 Filing
- 2.4 Articles of Incorporation; permissible provisions
- 2.5 Articles of Incorporation; conflict with bylaws
- 2.6 Selection of board; adoption of bylaws; first meeting; quorum; election of officers; transaction of business.
- 2.7 Adoption, amendment or repeal of bylaws; contents of bylaws

**Chapter 3. Corporate Name**

- 3.1 Corporate name; required words and abbreviations
- 3.2 Reservation of Name

**Chapter 4. Registered office and resident agent**

- 4.1 Registered office and registered agent
- 4.2 Changing registered office or resident agent; statement; changing address of registered office.
- 4.3 Resignation of resident agent
- 4.4 Service of process

**Chapter 5. Powers and purpose**

- 5.1 Formation of Entity for lawful purpose
- 5.2 Corporate powers
- 5.3 Jurisdiction; no waiver of sovereign immunity

**Chapter 6. AMENDMENTS TO ARTICLES OF INCORPORATION**

- 6.1 Powers to amend
- 6.2 Articles of incorporation; amendment procedure

**Chapter 7. DISSOLUTION**

- 7.1 Dissolution
- 7.2 Articles of Dissolution
- 7.3 Conditions to dissolution by incorporators or directors
- 7.4 Grounds for administrative dissolution
- 7.5 Procedure for and effect of administrative dissolution
- 7.6 Reinstatement following administrative dissolution
- 7.7 Grounds for judicial dissolution
- 7.8 Corporate existence continued for purpose of winding up affairs
- 7.9 Known claims against dissolved Entity
- 7.10 Unknown claims against dissolved Entity

**Chapter 8. CORPORATIONS WHOLLY OWNED BY THE TRIBE**

- 8.1 Scope
- 8.2 Directly owned Entities, indirectly owned Entities, consent
- 8.3 Special powers, privileges and immunities
- 8.4 Liability of Tribe as a shareholder

**Chapter 9. FOREIGN CORPORATIONS**

- 9.1 [Reserved]

**Chapter 10. Annual Reports**

- 10.1 Annual Report for Tribal Secretary

**TITLE II. CORPORATIONS**

**Chapter 11. General Provisions**

- 11.1 Articles of incorporation; filing and contents
- 11.2 Name
- 11.3 Reservation of name

- 11.4 Registered office and registered agent
- 11.5 Amendment to Articles
- 11.6 Conversion into a domestic Corporation

## **Chapter 12. CAPITAL STRUCTURE AND CORPORATE FINANCE**

- 12.1 Issuance and classes of shares; rights, preference and limitations
- 12.2 Issuance or transfer of shares without certificates; statement
- 12.3 Share certificates
- 12.4 Liability

## **Chapter 13. SHAREHOLDERS**

- 13.1 Meetings of shareholders; place
- 13.2 Annual meeting of shareholders
- 13.3 Special meeting of shareholders
- 13.4 Meetings of shareholders; notice; adjournment; result of shareholder's attendance at meeting.
- 13.5 Shareholder meeting; quorum
- 13.6 Voting by shareholders

## **Chapter 14. DIRECTORS AND OFFICERS**

- 14.1 Management of Corporation; qualifications of director
- 14.2 Number, election and term of directors; resignation; removal, designation and compensation
- 14.3 Director; duties and authority
- 14.4 Director or officer; manner of discharging duties; reliance on information, opinions, reports, or statements; action against director or officer; limitations.
- 14.5 Filing vacancy in the board
- 14.6 Regular or special meetings of the board
- 14.7 Quorum; majority vote as constituting action of the board
- 14.8 Consent to action of the board without a meeting
- 14.9 Committees; designation by the board; membership; absence or disqualification of members; terms
- 14.10 Committees; powers and authority; limitations; subcommittees
- 14.11 Officers of corporation; election or appointment; holding 2 or more officers; authority and duties
- 14.12 Removal or resignation of officers; contract rights
- 14.13 Liability of directors for corporate actions; liability of shareholders accepting or receiving share dividend or distribution

## **Chapter 15. DISSOLUTION**

- 15.1 Dissolution by action of board and shareholders; certificate of dissolution

- 15.2 Provision for debts, obligations and liabilities; distribution of remaining assets.

### **TITLE III. NON-PROFIT CORPORATIONS**

#### **Chapter 16 Organization**

- 16.1 Articles of incorporation; filing and contents
- 16.2 Name
- 16.3 Reservation of name
- 16.4 Registered office and registered agent
- 16.5 Organization of Non-Profit Corporation
- 16.6 Bylaws

#### **Chapter 17 Purposes and Powers**

- 17.1 Purposes
- 17.2 General Powers

#### **Chapter 18 Members and Memberships**

- 18.1 Definitions
- 18.2 Admission
- 18.3 Consideration
- 18.4 No requirement of Members
- 18.5 Differences in rights and obligations of Members
- 18.6 Transfers
- 18.7 Member's liability to third parties
- 18.8 Member's liability for dues, assessments and fees
- 18.9 Creditors action against member
- 18.10 Resignation
- 18.11 Termination, expulsion and suspension
- 18.12 Purchase of Memberships

#### **Chapter 19 Member's Meetings and Voting**

- 19.1 Annual and regular meetings
- 19.2 Special meetings
- 19.3 Court-Ordered meeting
- 19.4 Action by written consent
- 19.5 Notice of meeting
- 19.6 Waiver of notice
- 19.7 Record Date – Determining members entitled to notice and vote
- 19.8 Action by written ballot
- 19.9 Members' list for meeting

- 19.10 Voting entitlement generally
- 19.11 Quorum requirements
- 19.12 Voting requirements
- 19.13 Proxies
- 19.14 Cumulative voting for directors
- 19.15 Other methods of electing directors
- 19.16 Non-Profit Corporation's acceptance of votes

## **Chapter 20 Board of Directors**

- 20.1 Requirement for and duties of board
- 20.2 Election, designation and appointment of directors
- 20.3 General standards for directors
- 20.4 Required officers
- 20.5 Duties and authority of officers
- 20.6 Standards of Conduct for officers

## **Chapter 21 Indemnification**

- 21.1 Definitions
- 21.2 Authority to indemnify
- 21.3 Mandatory indemnification
- 21.4 Indemnification of officers, employees and agents
- 21.5 Insurance

## **Chapter 22 Amendments of Articles of Incorporation and Bylaws**

- 22.1 Authority to amend
- 22.2 Amendment of articles by directors
- 22.3 Amendment by articles directors and Members
- 22.4 Class voting by Members on amendments to articles
- 22.5 Articles of amendment
- 22.6 Amendment of bylaws by directors
- 22.7 Amendment of bylaws by directors and Members
- 22.8 Class voting by Members on amendments to bylaws

## **Chapter 23 Sale of Assets**

- 23.1 Sale of assets in regular course of activities and mortgage of assets
- 23.2 Sale of assets other than in the regular course of activities

## **Chapter 24 Distributions**

- 24.1 Prohibited distributions

**Chapter 25 Dissolution**

- 25.1 Dissolution by incorporators or directors and third persons
- 25.2 Dissolution by directors, Members and third persons
- 25.3 Public notice

**Chapter 26 Foreign Non-Profit Corporations**

- 26.1 [Reserved]

**Chapter 27 Records**

- 27.1 Corporate records
- 27.2 Inspection of records by members
- 27.3 Scope of inspection rights
- 27.4 Limitations on use of membership list
- 27.5 Financial statements for members
- 27.6 Report of indemnification to members

**TITLE IV. MISCELLANEOUS****Chapter 28 Miscellaneous**

- 28.1 Severability
- 28.2 Construction and application of Ordinance and bylaws
- 28.3 Penalties
- 28.4 Applicable Law
- 28.5 Fees

## **TITLE I. GENERAL PROVISIONS**

### **1.1 Short Title.**

This Ordinance shall be known and cited to as “Saint Regis Mohawk Tribe Business Organizations Ordinance.”

### **1.2 Purpose.**

This Ordinance is enacted to provide for the creation, organization, and regulation of various business entities under the laws of the Saint Regis Mohawk Tribe.

### **1.3 Definitions.**

(1) “Articles” means the original articles of incorporation or organization, or any other instrument filed or issued under any statute to organize a domestic or foreign corporation, domestic or foreign non-profit corporation or a limited liability company, as may be amended or restated from time to time.

(2) “Board” means the board of directors or other governing board of a corporation or non-profit corporation.

(3) “Corporation” means a corporation formed under this Ordinance.

(4) “Director” means a member of a board of directors.

(5) “Distribution” means a direct or indirect transfer of money or other property, except the corporation’s shares, or the incurrence of indebtedness by the corporation to or for the benefit of its shareholders in respect to the corporation’s shares.

(6) “Entity” means any Corporation or Non-Profit Corporation formed under this Ordinance.

(7) “General Counsel” means the General Counsel of the Tribe.

(8) “Non-Profit Corporation” means a public benefit, mutual benefit or religious corporation incorporated under this Ordinance.

(9) “Person” means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, including any group, organization, co-tenancy, plan, board, council or committee, corporation, custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

(10) “Shareholder” means a person holding units of proprietary interest in a

corporation and is considered to be synonymous with “member” in a nonstock corporation.

(11) “Shares” means the units into which proprietary interests in a corporation are divided and is considered to be synonymous with “membership” in a nonstock corporation.

(12) “State” means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the Tribe.

(13) “Tribal Council” means the Tribal Council of the Saint Regis Mohawk Tribe.

(14) “Tribal Court Clerk” means the clerk of the Tribal Court.

(15) “Tribal Court” means the Tribal Courts of the Saint Regis Mohawk Tribe.

(16) “Tribal Member” means a person who is enrolled under the Tribe’s Membership Code or a person who is eligible to be enrolled regardless of where they reside. “Membership Code” means the 1986 Membership Code of the Tribe, as may be amended from time to time.

(17) “Tribal Secretary” means the Tribe’s Office of General Counsel, or such other office within the Tribe as the Tribal Council may determine from time to time.

(18) “Tribal Territory” or “Territory” means all lands within the 1796 Treaty with the Seven Nations of Canada (97 Stat. 55) and includes any other lands over which the Tribe exercises jurisdiction.

(19) “Tribe” means the Saint Regis Mohawk Tribe.

#### **1.4      Applicability of ordinance generally.**

The provisions of this Ordinance shall apply to all entities organized hereunder or which elect to accept the provisions of this Ordinance.

#### **1.5      Applicable law.**

The entities organized and created under this Ordinance shall be subject to this Ordinance, and all other laws of the Tribe. By organizing and creating an entity under this Ordinance, the entity and all owners shall be considered to have entered into a consensual relationship with the Tribe and expressly consent to be subject to the full extent of the Tribe’s legislative, regulatory and adjudicatory jurisdiction. Unless displaced by particular provisions of this Ordinance or other Tribal law, the principles of law and equity supplement this Ordinance.

#### **1.6      Amendment or repeal of this Ordinance.**

This Ordinance may be amended by the Tribal Council and shall be processed following

the Tribal Procedures Act and include notice to, and review by, the Community.

### **1.7     Sovereign Immunity**

By the adoption of this Ordinance, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal, tribal or state, and neither the adoption of this Ordinance, nor the incorporation of any Corporation hereunder, shall by itself be construed to be a waiver of the sovereign immunity of the Tribe or a consent to suit against the Tribe in any such court.

## **CHAPTER 2 FORMATION**

### **2.1     Incorporators.**

One or more Tribal Members who have attained at least 18 years of age, may be the incorporators of an Entity by signing and filing articles of incorporation as provided for in this Ordinance. Any Corporation formed under this Ordinance must maintain at least fifty-one percent (51%) ownership by a Tribal Member or Members at all times. For Non-Profit corporations, the Board of Directors must be comprised of at least fifty-one percent (51%) Tribal Members at all times.

### **2.2     Articles of incorporation; filing and contents.**

In order to form an Entity, one or more authorized persons must prepare and execute Articles, which shall be filed in the office of the Tribal Secretary. In addition to any items required by this Ordinance for the specific type of Entity, all Articles shall include the following:

- (a)     A name of the Entity that satisfies the requirements of Chapter 3.
- (b)     The purposes for which the Entity is formed. It is sufficient to state that the Entity may engage in any activity within the purposes for which Entities may be formed under this Ordinance.
- (c)     The street address, and the mailing address if different from the street address, of the Entity's initial registered office and the name of the Entity's initial resident agent at that address.
- (d)     The names, email address and physical addresses of each incorporator or organizer.
- (e)     The duration of the Entity, which may be perpetual.
- (f)     A list of the following:
  1. If a Corporation, the initial shareholders of the Corporation and their Tribal

- membership status; or
2. If a Non-profit Corporation, the initial Board of Directors and their Tribal membership status.
- (g) A consent to the jurisdiction of the Tribe, signed by all shareholders or board members of the Entity being formed.

### **2.3 Filing**

(a) The signed copy of the Articles and any other forms to be filed in accordance with this Ordinance shall be delivered to the Tribal Secretary. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing.

(b) Upon determining that the Articles satisfy the requirements of this section 2.3 and the specific requirements (if any) for any other Entity under this Ordinance, the Tribal Secretary shall stamp the articles filed, along with the date such filing occurred, and issue the corporation a Certificate of Incorporation/Organization. A document filed under this section is effective at the time it is endorsed unless a subsequent effective time, which shall not be later than 90 days after the date of delivery, is set forth in the document. The Certificate of Incorporation/Organization shall be conclusive evidence that the Entity has been formed under this Ordinance. The Entity's corporate existence shall begin on the effective date of the Articles.

### **2.4 Articles of incorporation; permissible provisions.**

The articles of incorporation or organization may contain any provision not inconsistent with this Ordinance or another statute or ordinance of the Tribe, including any of the following:

- (a) A provision for management of the business and conduct of the affairs of the Entity, or creating, defining, limiting, or regulating the powers of the Entity, its directors and shareholders, or a class of shareholders.
- (b) A provision that under this Ordinance is required or permitted to be set forth in the bylaws.

### **2.5 Articles of Incorporation; conflict with bylaws.**

Whenever a provision of the Articles is inconsistent with corporate bylaws, the Articles shall be controlling.

### **2.6 Selection of board; adoption of bylaws; first meeting; quorum; election of officers; transaction of business.**

Before or after filing of the articles of incorporation, a majority of the incorporators, at a meeting or by written instrument, shall select a board and may adopt bylaws. On or after the filing date of the articles any member of the board may call the first meeting of the board upon not less than 3 days' notice to each director.

## **2.7 Adoption, amendment, or repeal of bylaws; contents of bylaws.**

The initial bylaws of a corporation shall be adopted by its incorporators, its shareholders, or its board. The shareholders or the board may amend or repeal the bylaws or adopt new bylaws unless the articles of incorporation or bylaws provide that the power to adopt new bylaws is reserved exclusively to the shareholders or that the bylaws or any particular bylaw shall not be altered or repealed by the board. The bylaws may contain any provision for the regulation and management of the affairs of the corporation not inconsistent with this Ordinance or the articles of incorporation.

## **CHAPTER 3** **CORPORATE NAME**

### **3.1 Corporate name; required words and abbreviations.**

(a) The corporate name must be such as to distinguish it upon the records in the office of the Tribal Secretary? from the name of any other corporation, LLC or d/b/a reserved, registered, formed or organized under the laws of the Tribe or qualified to do business or registered as a foreign entity within the Territory, provided, however, that a corporation may register under any name which is not such as to distinguish it upon the records of the office of the Tribal Secretary from the name of any entity or d/b/a with the written consent of the other entity or d/b/a, which written consent shall be filed with the Tribal Secretary.

(b) The corporate name may not contain "Saint Regis Mohawk Tribe", or any other name as may be adopted by the Tribe in the future, unless the Entity is a wholly owned entity of the Tribe.

### **3.2 Reservation of name.**

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize an Entity under this Ordinance and to adopt that name;

(2) Any domestic corporation or any foreign corporation registered within the Territory which, in either case, proposes to change its name; and

(b) The reservation of a specified name shall be made by filing a signed application with the Tribal Secretary, specifying the name to be reserved and the name and address of the applicant. If the Tribal Secretary, in his or her sole discretion, finds that the name is available for use, the Tribal Secretary shall reserve the name for the exclusive use of the applicant for a

period of 120 days.

(c) A fee shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

## **CHAPTER 4** **REGISTERED OFFICE AND REGISTERED AGENT**

### **4.1 Registered office and registered agent.**

Each Entity authorized to transact business under this Ordinance shall have and continuously maintain both of the following:

(a) A registered office within the Tribe's Territory which may be the same as its place of business.

(b) Each Entity shall designate a registered agent in its articles of incorporation. The registered agent may be a natural person residing within the Tribe's Territory, or a corporate entity. The registered agent must maintain an office that is identical with the registered office.

### **4.2 Changing registered office or resident agent; statement; changing address of registered office.**

(1) An Entity authorized to transact business under this Ordinance may change its registered office or change its resident agent, or both, upon filing a statement with the Tribal Secretary. The statement shall provide all of the following information:

(a) The corporate name.

(b) The street address of the corporation's then registered office, and its mailing address if different from its street address.

(c) If the address of the corporation's registered office is changed, the street address and the mailing address, if different from the street address, to which the registered office is to be changed.

(d) The name of the corporation's then resident agent.

(e) If the corporation's resident agent is changed, the name of its successor resident agent.

(f) That the address of the corporation's registered office and the address of its resident agent, as changed, will be identical.

(g) That the change was authorized by resolution duly adopted by the

corporation's board.

(2) If a resident agent changes its business or residence address to another place, the resident agent may change the address of the registered office of any corporation of which the person is a resident agent by filing a statement as required in subsection (1), except, the statement need only be signed by the resident agent, need not be responsive to subsection (1)(e) or (g), and shall recite that a copy of the statement has been mailed to the corporation.

#### **4.3 Resignation of resident agent.**

A resident agent of a corporation may resign by filing a written notice of resignation with the Tribal Secretary, and the corporation shall promptly appoint a successor resident agent.

#### **4.4 Service of process.**

(1) Any process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon (1) the registered agent of the corporation named in the articles, or (2) an officer of the corporation, or (3) the Tribal Secretary.

(2) The Tribal Secretary shall immediately forward, by certified mail addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the Tribal Secretary is returnable in not less than 30 days notwithstanding a shorter period specified in the process, notice, or demand.

### **CHAPTER 5 POWERS AND PURPOSE**

#### **5.1 Formation of Entity for lawful purpose.**

An Entity may be formed under this Ordinance for any lawful purpose, except as otherwise prohibited under the Tribal Law.

#### **5.2 Corporate powers.**

An Entity, subject to any limitation provided in this Ordinance, in any other provision of tribal law, or in its articles of incorporation, shall have power in furtherance of its corporate purposes to do all of the following:

- (a) Have perpetual duration.
- (b) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.
- (c) To make and amend bylaws not inconsistent with its articles of incorporation or with the laws of the Tribe, for regulating and managing the affairs of the Entity.

- (d) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, personal property, or any legal or equitable interest in such property, wherever located.
- (e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its personal property.
- (f) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of any entity.
- (g) To make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.
- (h) To lend money, invest and reinvest its funds, and receive and hold personal property as security for repayment.
- (i) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity.
- (j) To conduct its activities, locate offices, and exercise the powers granted by this Ordinance within or without the Territory.
- (k) To elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation.
- (l) To make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest.
- (m) To carry on a business.
- (n) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.
- (o) Cease its corporate activities and dissolve.
- (p) Except for those Corporations wholly owned by the Tribe, sue and be sued, complain and defend its corporate name.
- (q) Have and exercise all powers necessary or convenient to effect any purpose for which the corporation is formed.
- (r) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

(s) Any Consent to suit by a corporation shall in no way extend to the Tribe, nor shall a consent to suit by a corporation in any way be deemed a waiver of any of the rights, privileges and immunities of the Tribe.

A privately owned Corporation formed under this Ordinance may not hold, lease or otherwise possess any real property within the Tribe's Territory unless such lease or possession is otherwise consistent with Tribal law.

A Corporation that is wholly owned by the Tribe or a subsidiary thereof may hold, lease or otherwise possess real property within the Tribe's Territory.

### **5.3 Jurisdiction; no waiver of sovereign immunity.**

To the maximum extent consistent with the due process of law, all Entities formed under this Ordinance and all directors, officers, and shareholders of such corporations shall be subject to the jurisdiction of the Tribe (including 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 and Section 5.2(p) 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 of the Tribe or of any Corporation wholly owned by the Tribe.

## **CHAPTER 6**

### **AMENDMENTS TO ARTICLES OF INCORPORATION**

#### **6.1. Powers to amend.**

An Entity may amend its articles of incorporation if the amendment contains only provisions that might lawfully be contained in original articles of incorporation filed at the time of making the amendment.

#### **6.2. Articles of incorporation; amendment procedure.**

(a) Before the first meeting of the board, the incorporators may amend the articles of incorporation by filing a certificate of amendment that is signed by a majority of the incorporators that sets forth the amendment and certifying that the amendment is adopted by unanimous consent of the incorporators.

(b) Unless the articles of incorporation provide otherwise, the board may adopt one (1) or more of the following amendments to the Entity's articles of incorporation without shareholder or member action:

1. Extend the duration of the Entity if it was incorporated at a time

when limited duration was required by law.

2. Delete the names and addresses of the initial directors.

3. Delete the name and address of the initial resident agent or registered office, if a statement of change is on file with the Entity.

4. Change the Entity name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the corporate name, or by adding, deleting, or changing a geographical attribution for the corporate name.

5. Any other change expressly permitted by this Ordinance to be made without shareholder or member action.

(c) Other amendments of the articles of incorporation, except as otherwise provided in this Ordinance, shall be proposed by the board and approved by the shareholders as provided in this section. The board may condition its submission of the amendment to the shareholders on any basis.

(d) Notice of a meeting setting forth the proposed amendment or a summary of the changes to be effected by the proposed amendment shall be given to each shareholder of record entitled to vote on the proposed amendment within the time and in the manner provided in this Ordinance for giving notice of meetings of shareholders.

(e) At the meeting, a vote of shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the outstanding shares entitled to vote on the proposed amendment and, in addition, if any class or series of shares is entitled to vote on the proposed amendment as a class, the affirmative vote of a majority of the outstanding shares of that class or series. The voting requirements of this section are subject to any higher voting requirements provided in this Ordinance for specific amendments or provided in the articles of incorporation.

(f) Any number of amendments may be acted upon at a single meeting.

(g) Upon adoption of an amendment, a certificate of amendment shall be filed with Tribal Secretary that sets forth the amendment and certifies that it was adopted by the board of directors.

## **CHAPTER 7** **DISSOLUTION**

### **7.1 Dissolution**

(a) An Entity may be dissolved in any of the following ways:

1. Automatically by expiration of a period of duration to which the Entity is limited by its articles of incorporation.
2. By action of the incorporators or directors prior to the appointment of the Board of Directors.
3. By action of the board and the shareholders consistent with the provisions of the Entity's articles or bylaws.
4. By a judgment of the Tribal Court in an action brought under this Ordinance or otherwise.
5. By action of the Tribal Council brought under section 7.4 of this Ordinance.
6. Administratively for failure to file an annual report or pay the filing fee.

(b) An Entity whose assets have been wholly disposed of under court order in receivership or bankruptcy proceedings may be summarily dissolved by order of the court having jurisdiction of the proceedings. A copy of the order shall be filed by the Clerk of the Tribal Court with the Tribal Secretary and Registered Agent.

## **7.2 Articles of Dissolution.**

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Tribal Secretary articles of dissolution setting forth:

- (1) the name of the corporation;
- (2) the date dissolution was authorized;
- (3) a statement that dissolution was approved by a sufficient vote of the board;
- (4) if approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;
- (5) if approval by members was required:
  - (i) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and
  - (ii) either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for

dissolution by each class was sufficient for approval by that class.

(7) if the corporation is a public benefit or religious corporation, that the notice required by Section 25.3(a) has been given.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

### **7.3 Conditions to dissolution by incorporators or directors.**

(a) A corporation may be dissolved by action of its incorporators or directors, if the corporation complies with all of the following conditions:

1. Has not commenced business.
2. Has not issued any shares.
3. Has no debts or other liabilities.
4. Has received no payments on subscriptions for its shares, or, if it has received payments, has returned them to those entitled thereto, less any part thereof disbursed for expenses.

(b) The dissolution of the corporation shall be effected by a majority of the incorporators or directors, executing and filing a certificate of dissolution stating:

1. The name of the corporation.
2. That the corporation has not commenced business and has issued no shares, and has no debts or other liabilities.
3. That the corporation has received no payments on subscriptions to its shares, or, if it has received payments, has returned them to those entitled thereto, less any part thereof disbursed for expenses.
4. That a majority of the incorporators or directors have elected that the corporation be dissolved.

### **7.4 Grounds for administrative dissolution.**

(a) The Tribal Secretary or the Tribal Council may commence a proceeding under this Chapter to administratively dissolve a corporation if:

1. the corporation does not pay within ninety (90) days after they are due any fees or penalties imposed by this Ordinance or other law;
2. the corporation does not deliver its annual report to the Tribal Secretary for two

- consecutive years;
3. the corporation is without a registered agent or registered office in the Territory for sixty (60) days or more;
  4. the corporation does not notify the director within 120 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or
  5. the corporation's period of duration, if any, stated in its articles of incorporation expires.
  6. The articles and certificate of incorporation were procured through fraud;
  7. The Entity was incorporated for a purpose not permitted under this Ordinance;
  8. The Entity failed to comply with the requirements under this Ordinance to incorporate;
  9. The Entity has flagrantly violated a provision of this Ordinance, or has violated a provision of this Ordinance more than once, or has violated more than one provision of this Ordinance; or
  10. The Entity has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise including, but not limited to, repeated failures to adhere to the Laws of the Saint Regis Mohawk Tribe.

(b) An action shall not be commenced under this section until 30 days after notice to the corporation by the Tribal Secretary or Tribal Council of the reason for the filing of the administrative dissolution. If the reason for the administrative dissolution is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the Tribal Secretary or Tribal Council shall give the corporation 30 additional days in which to effect the correction before filing the action.

## **7.5 Procedure for and effect of administrative dissolution.**

(a) Upon determining that one or more grounds exist under Section 7.4 for dissolving a corporation, the Tribal Secretary shall serve the corporation with written notice of that determination under Section 7.4, and in the case of a public benefit corporation shall notify the General Counsel in writing.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Tribal Secretary that each ground determined by the Tribal Secretary

does not exist within at least sixty (60) days after service of the notice on the Entity, the Tribal Secretary may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Tribal Secretary shall file the original of the certificate and serve a copy on the Entity, and in the case of a public benefit corporation shall notify the General Counsel in writing.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under Section 7.8 and notify its claimants under Sections 7.9 and 7.10.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

#### **7.6      Reinstatement following administrative dissolution.**

(a) A corporation administratively dissolved under Section 7.4 may apply to the Tribal Secretary for reinstatement within two years after the effective date of dissolution. The application must:

1. recite the name of the corporation and the effective date of its administrative dissolution;
2. state that the ground or grounds for dissolution either did not exist or have been eliminated;
3. state that the corporation's name satisfies the requirements of Section 4.01; and
4. contain a certification reciting that all fees owed by the corporation have been paid.

(b) If the Tribal Secretary determines that the application contains the information required by subsection (a) and that the information is correct, the Tribal Secretary shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the Entity.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

#### **7.7      Grounds for judicial dissolution.**

(a) The Tribal Court may dissolve an Entity:

1. in a proceeding by the General Counsel if it is established that:

- (i) the Entity obtained its articles of incorporation through fraud;
- (ii) the Entity has continued to exceed or abuse the authority conferred upon it by law;
- (iii) the Entity is a public benefit corporation and the corporate assets are being misapplied or wasted; or
- (iv) the Entity is a public benefit corporation and is no longer able to carry out its purposes.

(b) The Tribal Court may dissolve a Non-Profit Corporation, except as provided in the articles or bylaws of a religious corporation, in a proceeding by 50 members or members holding 5% of the voting power, whichever is less, or by a director or any person specified in the articles, if it is established that:

- 1. the directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to breach the deadlock;
- 2. the directors or those in control of the Non-Profit Corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;
- 3. the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired
- 4. the corporate assets are being misapplied or wasted; or
- 5. the Non-Profit Corporation is a public benefit or religious corporation and is no longer able to carry out its purposes.

(c) Prior to dissolving a corporation, the court shall consider whether:

- 1. there are reasonable alternatives to dissolution;
- 2. dissolution is in the public interest, if the corporation is a public benefit corporation; and
- 3. dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

## **7.8 Corporate existence continued for purpose of winding up affairs.**

Except as the Tribal Court may otherwise direct, a dissolved Entity shall continue its corporate existence but shall not carry on business except for the purpose of winding up its affairs by:

- (a) Collecting its assets.
- (b) Selling or otherwise transferring, with or without security, assets which are not to be distributed in kind to its shareholders.
- (c) Paying its debts and other liabilities.
- (d) Doing all other acts incident to liquidation of its business and affairs.

#### **7.9 Known claims against dissolved entity.**

(a) A dissolved Entity may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved Entity shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

1. describe information that must be included in a claim;
2. provide a mailing address where a claim may be sent;
3. state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
4. state that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

1. if a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;
2. if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(d) For purposes of this section “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

#### **7.10 Unknown claims against dissolved entity.**

(a) A dissolved Entity may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

1. be published one time in a newspaper of general circulation located on or near the Tribe's Territory;
2. describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
3. state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within three years after publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved Entity within five years after the publication date of the newspaper notice:

1. a claimant who did not receive written notice under Section 7.9;
2. a claimant whose claim was timely sent to the dissolved corporation but not acted upon; or
3. a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

1. against the dissolved Entity, to the extent of its undistributed assets; or
2. if the assets have been distributed in liquidation, against any person, other than a creditor of the Entity, to whom the Entity distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

## **CHAPTER 8** **ENTITIES WHOLLY OWNED BY THE TRIBE**

### **8.1 Scope.**

This chapter applies to all Entities wholly owned by the Tribe, whether directly or as a subsidiary of another entity wholly owned by the Tribe, as provided in this chapter.

### **8.2 Directly owned Entities; indirectly owned Entities; consent.**

(a) The consent of the Tribal Council shall be required prior to the incorporation under this Ordinance of any Entity to be wholly owned by the Tribe. For this purpose, the incorporator shall file a certified copy of a resolution of the Tribal Council authorizing the

formation of the Entity with the Tribal Secretary, at the same time as the incorporator files the articles of incorporation of an Entity to be wholly owned by the Tribe.

(b) The consent of the board of directors of the Entity wholly owned by the Tribe shall be required prior to the incorporation under this Ordinance of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe. For this purpose, the incorporator shall file with the Tribal Secretary, when the incorporator files the articles of incorporation of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe, a certified copy of a resolution of the board of the parent corporation authorizing the formation of the subsidiary corporation.

(c) The articles of an Entity wholly owned, directly or indirectly, by the Tribe and subject to the provisions of this chapter shall expressly so state and when accepting the articles for filing, the administrator shall note that the corporation is governed by the provisions of this Ordinance applicable to wholly owned tribal Entities.

### **8.3 Special powers, privileges and immunities.**

The special powers, privileges and immunities described in this section shall be available to an Entity wholly owned, directly or indirectly, by the Tribe.

(a) Jurisdictional and Tax Immunities. All of the rights, privileges and immunities of the Tribe concerning federal, state, or local taxes, regulations and jurisdiction are hereby conferred on all tribal Entities wholly owned, directly or indirectly, by the Tribe to the same extent that the Tribe would have such rights, privileges and immunities if it engaged in the activities undertaken by the Entity. Absent consent by the Entity, an Entity wholly owned, directly or indirectly, by the Tribe shall not be subject to taxation, except to the extent that such taxation is necessary and reasonably appropriate to compensate the Tribe for services provided to the Entity by the Tribe.

(b) Sovereign Immunity. The sovereign immunity of the Tribe is hereby conferred on all tribal Entities wholly owned, directly or indirectly, by the Tribe. An Entity wholly owned, directly or indirectly, by the Tribe shall have the power to sue and is authorized to consent to be sued in the tribal? court, and in all other courts of competent jurisdiction, provided, however, that:

1. no such consent to suit shall be effective against the Entity? unless such consent is:

(i) explicit,

(ii) contained in a written contract or commercial document to which the corporation is a party, and

(iii) specifically approved by the board of directors of the corporation, and

(iv) such waiver is limited as to duration and venue.

2. Any recovery against such Entity shall be limited to the assets of the Entity. Any consent to suit may be limited to the court or courts in which suit may be brought, to the matters that may be made the subject of the suit and to the assets or revenues of the Entity against which any judgment may be executed.

#### **8.4 Liability of Tribe as a shareholder.**

Neither the Tribe nor any member of the Tribal Council shall be under any obligation to an Entity wholly owned, directly or indirectly, by the Tribe or to the creditors of any such Entity and the Tribe shall not be deemed to have waived any of the Tribe's privileges or immunities if the Tribe incorporates, owns or operates an Entity, directly or indirectly.

### **CHAPTER 9 FOREIGN CORPORATIONS**

#### **9.1 [RESERVED]**

### **CHAPTER 10 ANNUAL REPORTS**

#### **10.1 Annual Report for Tribal Secretary.**

(a) Each Entity shall deliver to the Tribal Secretary an annual report on a form prescribed and furnished by the Tribal Secretary that sets forth:

1. the name of the Entity;
2. the address of its registered office and the name of its registered agent at the office within the Territory;
3. the address of its principal office;
4. the names and business or residence addresses of its directors and principal officers;
5. a brief description of the nature of its activities;
6. and, for Non-Profit Corporations:
  - (i) whether or not it has members; and
  - (ii) whether it is a public benefit, mutual benefit or religious corporation;

(b) The information in the annual report must be current on the date the annual report is executed on behalf of the Entity.

(c) The first annual report must be delivered to the Tribal Secretary between January 1 and April 1 of the year following the calendar year in which an Entity was incorporated. Subsequent annual reports must be delivered to the Tribal Secretary between January 1 and April 1 of the following calendar years.

(d) If an annual report does not contain the information required by this section, the Tribal Secretary shall promptly notify the Entity in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Tribal Secretary within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) No annual report shall be required for an Entity that is wholly owned by the Tribe, or is a subsidiary of an Entity that is wholly owned by the Tribe.

## **TITLE II. CORPORATIONS**

### **CHAPTER 11 GENERAL PROVISIONS**

#### **11.1 Articles of incorporation; filing and contents.**

In order to form a Corporation, one or more authorized persons must prepare and execute Articles, which shall be filed in the office of the Tribal Secretary. In addition to the items required by Section 2.2, all Articles for a Corporation shall also include the following information:

(a) The aggregate number of shares which the corporation has authority to issue.

(b) If a corporation is authorized pursuant to its articles of incorporation to create and issue shares of stock, the articles of incorporation shall also set forth the following:

1. If the shares are, or are to be, divided into classes, or into classes and series, the designation of each class and series, the number of shares in each class and series, and a statement of the relative rights, preferences and limitations of the shares of each class and series, to the extent that the designations, numbers, relative rights, preferences, and limitations have been determined.

2. If any class of shares is to be divided into series, a statement of any authority vested in the board to divide the class of shares into series, and to determine or change for any series its designation, number of

shares, relative rights, preferences and limitations.

## **11.2 Name.**

The corporate name of a domestic Corporation shall contain the word "corporation," "company," "incorporated," or "limited" or shall contain 1 of the following abbreviations: corp., co., inc., or ltd., with or without periods.

## **11.3 Reservation of name.**

A Corporation may reserve a name in accordance with Section 3.2 of this Ordinance.

## **11.4 Registered office and registered agent.**

Each Corporation formed pursuant to this Title shall maintain a Registered Office and Registered Agent consistent with the requirements of Title 1, Chapter 6 of this Ordinance.

## **11.5 Amendment of articles.**

A Corporation may amend its Article by utilizing the process set forth in Title 1, Chapter 6 of this Ordinance.

## **11.6 Conversion into a domestic corporation.**

(a) As used in this section, the term "other entity" means a limited liability company, or any other unincorporated business including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a foreign corporation.

(b) Any other entity may convert to a corporation under this ordinance by complying with subsection (h) of this section and filing a certificate of conversion with the Secretary.

(c) The certificate of conversion to corporation shall state:

(1) The date on which and jurisdiction where the other entity was first created, incorporated, formed or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic corporation;

(2) The name and type of entity of the other entity immediately prior to the filing of the certificate of conversion to corporation;

(3) The name of the corporation as set forth in its certificate of incorporation filed in accordance with subsection (b) of this section; and

(4) A certification that the conversion was approved by the appropriate corporate body or owner(s) and the date on which the approval occurred.

(d) Upon the effective time of the certificate of conversion to corporation and the certificate of incorporation, the other entity shall be converted to a corporation under this Ordinance and the

corporation shall thereafter be subject to all of the provisions of this law, except that the existence of the corporation shall be deemed to have commenced on the date the other entity commenced its existence in the jurisdiction in which the other entity was first formed.

(e) The conversion of any other entity to a corporation under this Ordinance shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a corporation of this State or the personal liability of any person incurred prior to such conversion.

(i) The certificate of conversion to corporation shall be signed by any person who is authorized to sign the certificate of conversion to corporation on behalf of the other entity.

## **CHAPTER 12** **CAPITAL STRUCTURE AND CORPORATE FINANCE**

### **12.1 Issuance and classes of shares; rights, preferences, and limitations.**

(a) A corporation may issue the number of shares authorized in its articles of incorporation. The shares may be all of one (1) class or may be divided into two (2) or more classes. Each class shall consist of shares having the designations and relative voting, distribution, dividend, liquidation, and other rights, preferences, and limitations, consistent with this Ordinance, as stated in the articles of incorporation. The articles of incorporation may deny, limit, or otherwise prescribe the voting rights and may limit or otherwise prescribe the distribution, dividend, or liquidation rights of shares of any class.

(b) If the shares are divided into two (2) or more classes, the shares of each class shall be designated to distinguish them from the shares of the other classes.

(c) Subject to the designations, relative rights, preferences, and limitations applicable to separate series, each share shall be equal to every other share of the same class.

(d) Any of the voting, distribution, liquidation, or other rights, preferences, or limitations of a class or series may be made dependent upon facts or events ascertainable outside of the articles of incorporation or a resolution of the board, if the manner in which the facts or events operate on the rights, preferences, or limitations is set forth in the articles of incorporation or board resolution.

### **12.2 Issuance or transfer of share with certificates; statement.**

(a) Unless the articles of incorporation or bylaws provide otherwise, the board may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until the certificates are surrendered to a corporation.

(b) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the

information required on certificates under this Ordinance.

**12.3 Share certificates.**

Except as otherwise provided for in this Ordinance, the shares of a corporation shall be represented by certificates which shall be signed by the chairperson of the board, vice-chairperson of the board, president or a vice-president and which also may be signed by another officer of the corporation.

**12.4 Liability.**

The Tribe shall be under no obligation to the corporation or the creditors of any corporation which the Tribe incorporates, owns, or operates, in whole or in part, and the Tribe shall not be deemed to have waived any of the Tribe's privileges or immunities if the Tribe incorporates, owns, or operates a corporation, in whole or in part.

**CHAPTER 13**  
**SHAREHOLDERS**

**13.1 Meetings of shareholders; place.**

Meetings of shareholders may be held at a place within or without the Tribe's Territory as provided for in the Corporation's bylaws. In the absence of such a provision, meetings shall be held at such other place as may be determined by the board.

**13.2 Annual meeting of shareholders.**

An annual meeting of shareholders for election of directors and for such other business as may come before the meeting shall be held at a time as provided in the bylaws, unless such action is taken by written consent as provided in the articles of incorporation.

**13.3 Special meeting of shareholders.**

A special meeting of shareholders may be called by the board, or by officers, directors or shareholders as provided in the bylaws. Notwithstanding any such provision, upon petition by the holders of not less than 20% of all the shares entitled to vote at a meeting, the Tribal Court, for good cause shown, may order a special meeting of shareholders to be called and held at such time and place, upon such notice and for the transaction of such business as may be designated in the order.

**13.4 Meetings of shareholders; notice; adjournment; result of shareholder's attendance at meeting.**

(a) Except as otherwise provided in this Ordinance, written notice of the time, place if any, and purposes of a meeting of shareholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each shareholder of record entitled to vote

at the meeting. Notice may be given personally, by mail, or by electronic transmission. If a shareholder or proxy holder receives notice of the meeting, then he or she may vote by remote communication, the means of remote communication allowed shall be included in the notice.

(b) A shareholder's attendance at a meeting will result in both of the following:

1. Waiver of objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.
2. Waiver of objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

### **13.5 Shareholder meeting; quorum.**

(a) Unless a greater or lesser quorum is provided in the articles of incorporation, in a bylaw adopted by the shareholders or incorporators, or in this Ordinance, shares entitled to cast a majority of the votes at a meeting constitute a quorum at the meeting. Whether or not a quorum is present, the meeting may be adjourned by a vote of the shares present.

(b) When the holders of a class or series of shares are entitled to vote separately on an item of business, this section applies in determining the presence of a quorum of the class or series for transaction of the item of business.

### **13.6 Voting by shareholders.**

(a) Each outstanding share is entitled to one (1) vote on each matter submitted to a vote of the shareholders, unless otherwise provided in the articles of incorporation.

(b) Other than the election of directors, if an action is to be taken by vote of the shareholders, it shall be authorized by a majority of the votes cast by the holders of shares entitled to vote on the action, unless a greater vote is required in the articles of incorporation or another section of this Ordinance. Unless otherwise provided in the articles of incorporation, abstaining from a vote or submitting a ballot marked "abstain" with respect to an action is not a vote cast on that action. Unless otherwise provided in the articles or bylaws, directors shall be elected by a plurality of the votes cast at an election.

## **CHAPTER 14**

### **DIRECTORS AND OFFICERS**

#### **14.1 Management of Corporation; qualifications of director.**

The business and affairs of a corporation shall be managed by or under the direction of

its board, except as otherwise provided in this Ordinance or in its articles of incorporation. A director need not be a shareholder of the corporation unless the articles or bylaws so require. The articles or bylaws may prescribe qualifications for directors.

#### **14.2 Number, election, and term of directors; resignation; removal, designation, and compensation.**

The board shall consist of one (1) or more members. The number of directors, manner of election, term, manner of resignation or removal, their designation and compensation of directors shall be fixed by, or in the manner provided in, the Corporation's articles of incorporation or bylaws.

#### **14.3 Director; duties and authority.**

All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitations set forth in the articles of incorporation.

#### **14.4 Director or officer; manner of discharging duties; reliance on information, opinions, reports, or statements; action against director or officer; limitations.**

(a) A director or officer shall discharge his or her duties as a director or officer including his or her duties as a member of a committee in the following manner:

1. In good faith.
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
3. In a manner he or she reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

1. One or more directors, officers, or employees of the corporation, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented.
2. Legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence.
3. A committee of the board of which he or she is not a member if the director or

officer reasonably believes the committee merits confidence.

(c) A director or officer is not entitled to rely on the information set forth in subsection (b) if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An action against a director or officer for failure to perform the duties imposed by this section shall be commenced within three (3) years after the cause of action has accrued, or within 2 years after the time when the cause of action is discovered or should reasonably have been discovered, by the complainant, whichever occurs first.

#### **14.5 Filling vacancy on board.**

Vacancies on a board of directors shall be filled in the manner set forth in the corporation's articles of incorporation or bylaws.

#### **14.6 Regular or special meetings of board.**

(a) Regular or special meetings of a board may be held either in or outside of the Tribe's Territory.

(b) A regular meeting may be held with or without notice as prescribed in the bylaws. A special meeting shall be held upon notice as prescribed in the bylaws. A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting. Unless required by the bylaws, neither the business to be transacted at, nor the purpose of, a regular or special meeting need be specified in the notice or waiver of notice of the meeting.

(c) Unless otherwise restricted by the articles of incorporation or bylaws, a member of the board or of a committee designated by the board may participate in a meeting by means of conference telephone or other means of remote communication through which all persons participating in the meeting can communicate with the other participants. Participation in a meeting pursuant to this subsection constitutes presence in person at the meeting.

#### **14.7 Quorum; majority vote as constituting action of board.**

(a) A majority of the members of the board then in office, or of the members of a committee of the board, constitutes a quorum for transacting business, unless the articles of incorporation or bylaws, or in the case of a committee, the board resolution establishing the committee, provide for a larger or smaller number.

(b) Amendment of the bylaws by the board requires the vote of not less than a majority of the members of the board then in office.

#### **14.8 Consent to action of board without meeting.**

Unless prohibited by the articles of incorporation or bylaws, action required or permitted to be taken under authorization voted at a meeting of the board or a committee of the board, may be taken without a meeting if, before or after the action, all members of the board then in office or of the committee consent to the action in writing or by electronic transmission. The written consents shall be filed with the minutes of the proceedings of the board or committee. The consent has the same effect as a vote of the board or committee for all purposes.

#### **14.9 Committees; designation by board; membership; absence or disqualification of member; terms.**

Unless otherwise provided in the articles of incorporation or bylaws, the board may designate one (1) or more committees, each committee to consist of one (1) or more of the directors of the corporation. A committee, and each member thereof, shall serve at the pleasure of the board.

#### **14.10 Committees; powers and authority; limitations; subcommittees.**

(a) A committee designated pursuant to Section 14.9, to the extent provided in a resolution of the board or in the bylaws, may exercise all powers and authority of the board in management of the business and affairs of the corporation. A committee does not have power or authority to do any of the following:

1. Amend the articles of incorporation.
2. Adopt an agreement of merger or share exchange.
3. Recommend to shareholders the sale, lease, or exchange of all or substantially all of the corporation's property and assets.
4. Recommend to shareholders a dissolution of the corporation or a revocation of a dissolution.
5. Amend the bylaws of the corporation.
6. Fill vacancies in the board.

(b) Unless a resolution of the board, the articles of incorporation, or the bylaws expressly provide the power or authority, a committee does not have the power or authority to declare a distribution or dividend or to authorize the issuance of shares.

(c) Unless otherwise provided in a resolution of the board, the articles of incorporation, or the bylaws, a committee may create 1 or more subcommittees. Each subcommittee shall consist of 1 or more members of the committee. The committee may delegate all or part of its

power or authority to a subcommittee.

**14.11 Officers of corporation; election or appointment; holding 2 or more offices; authority and duties.**

The officers of a corporation shall consist of a president, secretary, treasurer, and, if desired, a chairman of the board, 1 or more vice-presidents, and such other officers as may be prescribed by the bylaws or determined by the board. Unless otherwise provided in the articles of incorporation or bylaws, the officers shall be elected or appointed by the board and shall serve consistent with the terms of the articles or bylaws.

**14.12 Removal or resignation of officers; contract rights.**

An officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the shareholders may be removed, with or without cause, only by vote of the shareholders, but his authority to act as an officer may be suspended by the board for cause. An officer may resign by written notice to the corporation. The resignation is effective upon its receipt by the corporation or at a subsequent time specified in the notice of resignation.

**14.13 Liability of directors for corporate actions; liability of shareholders accepting or receiving share dividend or distribution.**

(a) Directors who vote for, or concur in, any of the following corporate actions are jointly and severally liable to the corporation for the benefit of its creditors or shareholders, to the extent of any legally recoverable injury suffered by its creditors or shareholders as a result of the action but not to exceed the difference between the amount paid or distributed and the amount that lawfully could have been paid or distributed:

1. Declaration of a share dividend or distribution to shareholders contrary to this Ordinance or contrary to any restriction in the articles of incorporation.
2. Distribution to shareholders during or after dissolution of the corporation without paying or providing for debts, obligations, and liabilities of the corporation as required under this Ordinance.
3. Making a loan to a director, officer, or employee of the corporation or of a subsidiary of the corporation contrary to this Ordinance.

(b) A director is not liable under this section if he or she has complied with section 14.4.

(c) A shareholder who accepts or receives a share dividend or distribution with knowledge of facts indicating it is contrary to this Ordinance, or any restriction in the articles of incorporation, is liable to the corporation for the amount accepted or received in excess of the shareholder's share of the amount that lawfully could have been distributed.

## **CHAPTER 15** **DISSOLUTION**

### **15.1 Dissolution by action of Board and shareholders; certificate of dissolution**

(a) A corporation may be dissolved by action of its board and shareholders as provided in this Chapter.

(b) A corporation's board may propose dissolution for action by the shareholders.

(c) The board must recommend dissolution to the shareholders unless the board determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders.

(d) The board may condition its submission of the proposal for dissolution on any basis.

(e) The proposed dissolution shall be submitted for approval at a meeting of shareholders. Notice shall be given to each shareholder of record whether or not entitled to vote at the meeting within the time and in the manner as provided in this Ordinance for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on dissolution of the corporation.

(f) At the meeting a vote of shareholders shall be taken on the proposed dissolution. The dissolution shall be approved upon receiving the affirmative vote of the holders of a majority of the outstanding shares of the corporation entitled to vote thereon.

(g) If the dissolution is approved, it shall be effected by the execution and filing of Articles of Dissolution in accordance with Title 1, Chapter 7 of this Ordinance:

### **15.2 Provision for debts, obligations and liabilities; distribution of remaining assets.**

Before making a distribution of assets to shareholders in dissolution, a corporation shall pay or make provision for its debts, obligations, and liabilities.

### **TITLE III. NON-PROFIT CORPORATIONS**

#### **CHAPTER 16 ORGANIZATION**

##### **16.1 Articles of incorporation; filing and contents.**

In order to form a Non-Profit Corporation, one or more authorized persons must prepare, execute and file articles of incorporation consistent with Title 1, Chapter 2, of this Ordinance. In addition to the information required by Section 2.2, all Articles of Incorporation for a Non-Profit Corporation shall also include the following:

(a) one of the following statements:

1. For public benefit corporations, a statement that the corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under applicable law;
2. This corporation is a mutual benefit corporation (such as a union or chamber of commerce);
3. This corporation is a religious corporation;
4. A statement as to whether or not the corporation will have members;
5. Provisions not inconsistent with law regarding the distribution of assets on dissolution; and

(b) A statement to the effect that no part of the net earnings of the Non-Profit Corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in its articles. The Non-Profit Corporation shall not, except to an unsubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of the corporation.

##### **16.2 Name.**

The corporate name of a Non-Profit Corporation shall contain the word "corporation," "company," "incorporated," or "limited" or shall contain 1 of the following abbreviations: corp., co., inc., or ltd., with or without periods.

##### **16.3 Reservation of name.**

A Non-Profit Corporation may reserve a name in accordance with Section 3.2 of this Ordinance.

#### **16.4 Registered office and registered agent.**

Each Non-Profit Corporation formed pursuant to this Title shall maintain a Registered Office and Registered Agent consistent with the requirements of Title 1, Chapter 6 of this Ordinance.

#### **16.5 Organization of Non-Profit Corporation.**

(a) After incorporation:

1. if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
2. if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:
  - i. to elect directors and complete the organization of the corporation; or
  - ii. to elect a board of directors who shall complete the organization of the corporation.

#### **16.6 Bylaws.**

(a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

## **CHAPTER 17** **PURPOSES AND POWERS**

### **17.1 Purposes.**

Every Non-Profit Corporation incorporated under this Ordinance has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

### **17.2 General powers.**

Unless its articles of incorporation provide otherwise, every Non-Profit Corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, the powers set forth in Title 1, Chapter 5 of this Ordinance.

In addition to the powers set forth in Title 1, Chapter 5 of this Ordinance, a Non-Profit Corporation shall have the following additional powers:

- (a) to impose dues, assessments, admission and transfer fees upon its members;
- (b) to establish conditions for admission of members, admit members and issue memberships;

## **CHAPTER 18** **ADMISSION OF MEMBERS**

### **18.1 Definitions**

(a) "Member" shall mean (without regard to what a person is called in the articles or bylaws) any person or persons who on more than one occasion, pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors

- (b) A person is not a member by virtue of any of the following:
- 1. any rights such person has as a delegate;
  - 2. any rights such person has to designate a director or directors; or
  - 3. any rights such person has as a director.

### **18.2 Admission.**

- (a) The articles or bylaws may establish criteria or procedures for admission of members.
- (b) No person shall be admitted as a member without his or her consent.

### **18.3 Consideration.**

Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

### **18.4 No requirement of Members.**

A Non-Profit Corporation is not required to have members.

### **18.5 Differences in rights and obligations of Members.**

All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

### **18.6 Transfers.**

(a) Except as set forth in or authorized by the articles or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom.

(b) No member of a public benefit or religious corporation may transfer a membership or any right arising therefrom.

(c) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

### **18.7 Member's liability to third parties.**

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

### **18.8 Member's liability for dues, assessments and fees.**

A member may become liable to the corporation for dues, assessments or fees; provided, however, that an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability.

### **18.9 Creditor's action against Member.**

(a) No proceeding may be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

(b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subdivision (a) to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

#### **18.10 Resignation.**

(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

#### **18.11 Termination, expulsion and suspension.**

(a) No member of a public benefit or mutual benefit corporation may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(b) A procedure is fair and reasonable when either:

1. The articles or bylaws set forth a procedure that provides:

- i. not less than fifteen days prior written notice of the expulsion, suspension or termination and the reasons therefore; and
- ii. an opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension not take place.

2. It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(c) Any written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the corporation's records.

(d) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension or termination.

(e) A member who has been expelled or suspended may be liable to the corporation for dues, assessments or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

#### **18.12 Purchase of memberships.**

(a) A public benefit or religious corporation may not purchase any of its memberships or any right arising therefrom.

(b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. No payment shall be made in violation of Chapter 11.

## **CHAPTER 19** **MEMBERS' MEETINGS AND VOTING**

### **19.1 Annual and regular meetings.**

(a) A Non-Profit Corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(b) A Non-Profit Corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(c) Annual and regular membership meetings may be held in or outside of the Tribal Territory at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

(d) At the annual meeting:

1. The president and chief financial officer shall report on the activities and financial condition of the corporation; and

2. The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of Sections 19.5 and 19.12(b).

3. At regular meetings the members shall consider and act upon such matters as may be raised consistent with the notice requirements of Sections 19.5 and 19.12(b).

(e) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

### **19.2 Special meeting.**

(a) A Non-Profit Corporation with members shall hold a special meeting of members:

1. on call of its board or the person or persons authorized to do so by the articles or bylaws; or

2. except as provided in the articles or bylaws of a religious corporation if the holders of at least five percent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.
  - (b) The close of business on the thirtieth day before delivery of the demand or demands for a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent requirement of subsection (a) has been met.
  - (c) If a notice for a special meeting demanded under subsection (a)2. is not given pursuant to Section 19.5 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (d), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to Section 19.5.
  - (d) Special meetings of members may be held in or out of the Tribal Territory? at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.
  - (e) Only those matters that are within the purpose or purposes described in the meeting notice required by Section 19.5 may be conducted at a special meeting of members

### **19.3 Court-Ordered meeting.**

- (a) The Tribal Court may summarily order a meeting to be held:
  1. Solely on petition of any five (5) members or other persons entitled to participate in an annual or regular meeting, if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or
  2. on application of any member or other person entitled to participate in a regular meeting, and in the case of a public benefit corporation, the attorney general, if a regular meeting is not held within 40 days after the date it was required to be held; or
  3. on application of at least five (5) members who signed a demand for a special meeting valid under Section 19.2, a person or persons entitled to call a special meeting and, in the case of a public benefit corporation, the General Counsel, if:
    - i. notice of the special meeting was not given within 30 days after the date the demand was delivered to a corporate officer; or
    - ii. the special meeting was not held in accordance with the notice.

- (b) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting

(or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) If the court orders a meeting, it may also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

#### **19.4 Action by written consent.**

(a) Unless limited or prohibited by the articles or bylaws, action required or permitted by this Ordinance to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least eighty percent (80%) of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty percent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise determined under Section 19.3 or 19.7, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a).

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the director.

(d) Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten days after such written notice is given.

#### **19.5 Notice of meeting.**

(a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice that conforms to the requirements of subsection (c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided, however, that notice of matters referred to in subsection (c)(2) must be given as provided in subsection (c).

(c) Notice is fair and reasonable if:

1. the corporation notifies its members of the place, date, and time of each annual, regular and special meeting of members no fewer than ten (10) days (or if notice is mailed by other than first class or registered mail, nor more than sixty (60) days) before the meeting date;
2. notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under this Ordinance; and

3. notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular or special meeting of members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under Section 19.7, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(e) When giving notice of an annual, regular or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if: (1) requested in writing to do so by a person entitled to call a special meeting; and (2) the request is received by the director or president of the corporation at least ten days before the corporation gives notice of the meeting.

## **19.6 Waiver of notice.**

(a) A member may waive any notice required by this Ordinance, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

1. waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;
2. waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

## **19.7 Record Date -- Determining Members entitled to notice and vote.**

(a) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(b) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(c) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the 60<sup>th</sup> day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(d) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members occurs.

(e) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than 70 days after the record date for determining members entitled to notice of the original meeting.

(f) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

#### **19.8 Action by written ballot.**

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(b) A written ballot shall:

1. set forth each proposed action; and
2. provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by written ballot shall:

1. indicate the number of responses needed to meet the quorum requirements;
2. state the percentage of approvals necessary to approve each matter other than election of directors; and
3. specify the time by which a ballot must be received by the corporation in order to be

counted.

- (e) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

#### **19.9 Members' list for meeting.**

(a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(b) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or attorney is entitled on written demand to inspect and, subject to the limitations of Sections 27.2(c) and 27.4, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(c) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a member, a member's agent, or attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b)); the Tribal Court, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

(e) Unless a written demand to inspect and copy a membership list has been made under subsection (b) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(f) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

#### **19.10 Voting entitlement generally.**

(a) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.

(b) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, their acts with respect to voting shall have the following effect:

1. If only one votes, such act binds all; and
2. If more than one votes, the vote shall be divided on a pro rata basis.

#### **19.11 Quorum requirements.**

(a) Unless this Ordinance, the articles, or bylaws provide for a higher or lower quorum, ten percent of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

(b) A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(c) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

(d) Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

#### **19.12 Voting requirements.**

(a) Unless this Ordinance, the articles, or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting (which affirmative votes also constitute a majority of the required quorum) is the act of the members.

(b) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

#### **19.13 Proxies.**

(a) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact.

(b) An appointment of a proxy is effective when received by the Director or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form; provided however that no proxy shall be valid for more than three years from its date of execution.

(c) An appointment of a proxy is revocable by the member.

(d) The death or incapacity of the member appointing a proxy does not affect the right of

the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the director or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) Appointment of a proxy is revoked by the person appointing the proxy:

1. attending any meeting and voting in person; or
2. signing and delivering to the director or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to Section 19.16 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

#### **19.14 Cumulative voting for directors.**

(a) If the articles or bylaws provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among two or more candidates.

(b) Cumulative voting is not authorized at a particular meeting unless:

1. The meeting notice or statement accompanying the notice states that cumulative voting will take place; or
2. a member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one member gives this notice all other members participating in the election are entitled to cumulate their votes without giving further notice.

(c) A director elected by cumulative voting may be removed by the members without cause if the requirements of the corporation's articles and bylaws are met, unless the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(d) Members may not cumulatively vote if the directors and members are identical.

#### **19.15 Other methods of electing directors.**

A corporation may provide in its articles or bylaws for election of directors by members or

delegates: (1) on the basis of chapter or other organizational unit; (2) by region or other geographic unit; (3) by preferential voting; or (4) by any other reasonable method.

#### **19.16 Corporation's acceptance of votes.**

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

1. the member is an entity and the name signed purports to be that of an officer or agent of the entity;
2. the name signed purports to be that of an attorney-in-fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; and
3. two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the director or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

### **CHAPTER 20 BOARD OF DIRECTORS**

#### **20.1 Requirement for and duties of board.**

(a) Each Non-Profit Corporation must have a board of directors, which shall be formed and governed by the relevant provisions of the articles of organization for the Non-Profit Corporation.

(b) The articles or bylaws may prescribe other qualifications for directors.

(c) Except as provided in this Ordinance or subsection (d), all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.

(d) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

## **20.2 Election, designation and appointment of directors.**

(a) If the corporation has members, all the directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated.

(b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.

## **20.3 General standards for directors.**

(a) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

1. in good faith;
2. with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
3. in a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

1. one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
2. legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence;
3. a committee of the board of which the director is not a member, as to matters within

its jurisdiction, if the director reasonably believes the committee merits confidence; or

4. in the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

#### **20.4 Required officers.**

(a) Unless otherwise provided in the articles or bylaws, a Non-Profit Corporation shall have a president, a secretary, a treasurer and such other officers as are appointed by the board.

(b) The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(c) The same individual may simultaneously hold more than one office in a Non-Profit Corporation.

#### **20.5 Duties and authority of officers.**

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

#### **20.6 Standards of conduct for officers.**

(a) An officer with discretionary authority shall discharge his or her duties under that authority:

1. in good faith;
2. with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

3. in a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

1. one or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;
2. legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence;
3. in the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

(c) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable to the corporation, any member, or other person for any action taken or not taken as an officer, if the officer acted in compliance with this section.

## CHAPTER 21 INDEMNIFICATION

### **21.1 Definitions.**

(a) "Director" means a member of the Board of Directors of a Non-Profit Corporation.

(b) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding.

(c) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in Section 8.56, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(d) "Party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

(e) "Proceeding" means any threatened, pending, or completed action, suit or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

## **21.2 Authority to indemnify.**

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the individual:

1. conducted himself or herself in good faith; and
2. reasonably believed:
  - i. in the case of conduct in his or her official capacity with the corporation, that his or her conduct was in its best interests; and
  - ii. in all other cases, that his or her conduct was at least not opposed to its best interests; and
3. in the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (a)(2)(ii).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

1. in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
2. in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his or her official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

## **21.3 Mandatory indemnification.**

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the

director was a party because he or she is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

#### **21.4 Indemnification of officers, employees and agents.**

Unless limited by a corporation's articles of incorporation:

(a) an officer of the corporation who is not a director is entitled to mandatory indemnification under Section 21.3, to the same extent as a director;

(b) the corporation may indemnify and advance expenses under this subchapter to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(c) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

#### **21.5 Insurance.**

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under Section 21.2 or 21.3.

## **CHAPTER 22**

### **AMENDMENTS TO ARTICLES OF INCORPORATION AND BYLAWS**

#### **22.1 Authority to amend.**

A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

#### **22.2 Amendment by directors.**

(a) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more of the following amendments to the corporation's articles without member approval:

1. to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
2. to delete the names and addresses of the initial directors;
3. to delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Tribal Secretary;
4. to change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name; or
5. to make any other change expressly permitted by this Ordinance to be made by director action.

(b) If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's articles. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

#### **22.3 Amendment by directors and Members.**

(a) Unless this Ordinance, the articles, bylaws, the members (acting pursuant to subsection (b)), or the board of directors (acting pursuant to subsection (c)) require a greater vote or voting by class, an amendment to a corporation's articles to be adopted must be approved:

1. by the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or

selected;

2. except as provided in Subsection 22.2 (a), by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less.

(b) The members may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the articles or board approval is required by subsection (a) to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with Section 19.5. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

#### **22.4 Class voting by Members on amendments.**

(a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would:

1. affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than such amendment would affect another class;
2. change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class
3. increase or decrease the number of memberships authorized for that class;
4. increase the number of memberships authorized for another class;
5. effect an exchange, reclassification or termination of the memberships of that class; or

6. authorize a new class of memberships.

(c) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.

(d) If a class is to be divided into two or more classes as a result of an amendment to the articles of a public benefit or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.

(e) Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of a corporation, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(f) A class of members of a public benefit or mutual benefit corporation is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

## **22.5 Articles of amendment.**

(a) A corporation amending its articles shall deliver to the Tribal Secretary articles of amendment setting forth the items required in Title 1, Section 6.2.

(b) In addition, any amendment to the Articles of a Non-Profit Corporation shall also include the following:

1. if approval by members was required:

- i. the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and
- ii. either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that class.

## **22.6 Amendment of bylaws by directors.**

If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's bylaws. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved in accordance with the provisions of its articles and bylaws. The notice must also state that

the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

## **22.7 Amendment of bylaws by directors and Members.**

(a) Unless this Ordinance, the articles, bylaws, the members (acting pursuant to subsection (b)), or the board of directors (acting pursuant to subsection (c)) require a greater vote or voting by class, an amendment to a corporation's bylaws to be adopted must be approved:

1. by the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;
2. by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(b) The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the bylaws or board approval is required by subsection (a) to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with Section 19.5. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

## **22.8 Class voting by Members on amendments.**

(a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:

1. affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than

such amendment would affect another class;

2. change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;
3. increase or decrease the number of memberships authorized for that class;
4. increase the number of memberships authorized for another class;
5. effect an exchange, reclassification or termination of all or part of the memberships of that class; or
6. authorize a new class of memberships.

(c) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

(d) If a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment; and

(e) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(f) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

## **CHAPTER 23 SALE OF ASSETS**

### **23.1 Sale of assets in regular course of activities and mortgage of assets.**

(a) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

1. sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities; or
2. mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

(b) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (a) is not required.

## **23.2 Sale of assets other than in regular course of activities.**

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the goodwill) other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized by subsection (b).

(b) Unless this Ordinance, the articles, bylaws, or the board of directors or members (acting pursuant to subsection (d)) require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

1. by the board; and
2. by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less;

(c) If the corporation does not have members the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with the provisions of its articles and bylaws. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(d) The board may condition its submission of the proposed transaction, and the members may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(e) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 19.5. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(f) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(g) A public benefit or religious corporation must give written notice to the Tribal Secretary at least twenty (20) days before it sells, leases, exchanges, or otherwise disposes of all, or substantially all, of its property if the transaction is not in the usual and regular course of its activities unless the attorney general has given the corporation a written waiver of this subsection.

(h) After a sale, lease, exchange, or other disposition of property is authorized, the

transaction may be abandoned (subject to any contractual rights), without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

## **CHAPTER 24 DISTRIBUTIONS**

### **24.1 Prohibited distributions.**

A Non-Profit Corporation formed under this Ordinance shall not make any distributions and no earnings of the Non-Profit Corporation shall inure to the benefit of a private individual.

## **CHAPTER 25 DISSOLUTION**

### **25.1 Dissolution by incorporators or directors and third persons.**

(a) A majority of the incorporators or directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the Tribal Secretary articles of dissolution in accordance with the provisions of Title 1, Chapter 7.

(b) The corporation shall give notice of any meeting at which dissolution will be approved in accordance with its articles and bylaws. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation.

(c) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

### **25.2 Dissolution by directors, Members and third persons.**

(a) Unless this Ordinance, the articles, bylaws or the board of directors or members (acting pursuant to subsection (c)) require a greater vote or voting by class, dissolution is authorized if it is approved:

1. by the board; and
2. by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(b) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance

with its articles and bylaws. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(c) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 19.5. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(e) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(f) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

### **25.3 Public notice.**

(a) A public benefit or religious corporation shall provide written public notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Tribal Secretary.

(b) No assets shall be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until twenty days after it has given the written notice required by subsection (a).

## **CHAPTER 26 FOREIGN NON-PROFIT CORPORATIONS**

### **26.1 [RESERVED]**

## **CHAPTER 27 RECORDS AND REPORTS**

### **27.1 Corporate records.**

- (a) A Non-Profit Corporation shall keep as permanent records the following documents:
1. minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors;

2. appropriate accounting records.
  3. a record of its members in a form that permits preparation of a list of the name and address of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.
- (b) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (c) A corporation shall keep a copy of the following records at its principal office:
1. its articles or restated articles of incorporation and all amendments to them currently in effect;
  2. its bylaws or restated bylaws and all amendments to them currently in effect;
  3. resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;
  4. the minutes of all meetings of members and records of all actions approved by the members for the past three years;
  5. all written communications to members generally within the past three years, including the financial statements furnished for the past three years
  6. a list of the names of its current directors and officers; and
  7. its most recent annual report delivered to the Tribal Secretary pursuant to Title, 1, Chapter 10.

## **27.2 Inspection of records by Members.**

(a) Subject to subsection (e), a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in Section 27.2(c) if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.

(b) Subject to subsection (e), a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and gives the corporation written notice at least five business days before the date on which the member wishes to inspect and copy:

1. excerpts from any records required to be maintained under Section 27.2(a), to the extent not subject to inspection under Section 27.3(a);

2. accounting records of the corporation; and
3. subject to Section 27.04, the membership list.

- (c) A member may inspect and copy the records identified in subsection (b) only if:
1. the member's demand is made in good faith and for a proper purpose;
  2. the member describes with reasonable particularity the purpose and the records the member desires to inspect; and
  3. the records are directly connected with this purpose.
- (d) This section does not affect:
1. the right of a member to inspect records under Section 19.9 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or
  2. the power of a court, independently of this Ordinance, to compel the production of corporate records for examination.
- (e) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

### **27.3 Scope of inspection rights.**

- (a) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.
- (b) The corporation may comply with a member's demand to inspect the record of members under Section 27.2(b)(3) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

### **27.4 Limitations on use of Membership list.**

- (a) Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:
1. used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
  2. used for any commercial purpose; or

3. sold to or purchased by any person.

## **27.5 Financial statements for Members.**

(a) Except as provided in the articles or bylaws of a religious corporation, a corporation upon written demand from a member shall furnish that member its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

1. stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
2. describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

## **27.6 Report of indemnification to Members.**

If a corporation indemnifies or advances expenses to a director in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

## **TITLE IV. MISCELLANEOUS**

### **28.1 Severability.**

If the Court shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, article or part of this Ordinance, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the clause, sentence, paragraph, section, article or part of this Ordinance as adjudged to be invalid or unconstitutional.

### **28.2 Construction and application of Ordinance and bylaws.**

(a) It is the policy of this Ordinance to give the maximum effect to the principle of freedom of contract and to the enforceability of corporate agreements.

(b) To the extent that, at law or in equity, a director or other person has duties (including fiduciary duties) to a corporation or to another person that is a party to or is otherwise bound by a corporate bylaws or other shareholders agreement, directors duties may be expanded or restricted or eliminated by provisions in the bylaws; provided, that the bylaws or any other agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

(c) Unless otherwise provided in the articles or bylaws, no person shall be liable to an Entity or to another director, shareholder or another person that is a party to or is otherwise bound by the articles or bylaws for breach of fiduciary duty for the director's or other person's good faith reliance on the provisions of the articles or bylaws.

(d) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this Ordinance.

### **28.3 Penalties.**

The Tribal Court shall have the authority to determine, apply and enforce appropriate remedies and penalties, including, but not limited to, civil fines, for violations of this Ordinance, or of the articles of incorporation or bylaws of any corporation formed pursuant to this Ordinance. The remedies available to corporations and their shareholders, shall include declaratory and injunctive relief, and special writs of mandamus, to compel actions necessary to secure the rights, obligations or privileges of such parties, whether or not those rights, obligations or privileges arise under this Ordinance.

### **28.4 Applicable Law.**

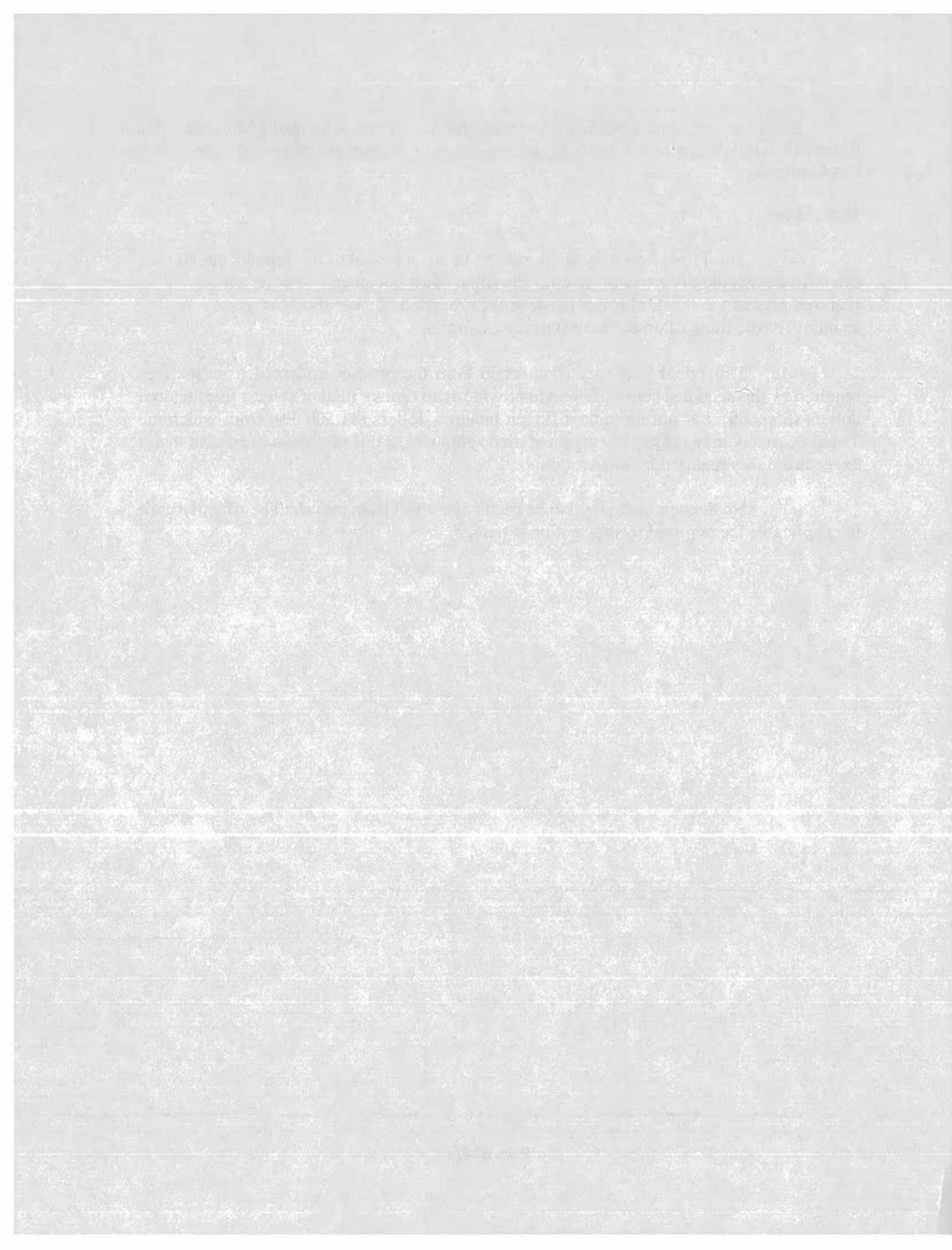
Except as otherwise specifically provided for herein, the Saint Regis Mohawk Tribe's Rules of Civil Procedure shall apply to any procedure or dispute not otherwise addressed by this Ordinance.

## **28.5 Fees.**

(a) The Tribal Secretary shall, subject to the approval of the Tribal Council, establish a schedule of fees to be paid for the filing of all documents or other actions required pursuant to this Ordinance (such as the provision of a certificate of good standing, or the filing of an annual report for example).

(b) The Tribal Secretary shall retain from the revenue collected from the fees required by this section a sum sufficient to provide at all times a fund of at least five hundred dollars (\$500.00), but not more than fifteen hundred dollars (\$1,500.00), from which the Tribal Secretary may refund any payment made pursuant to this section to the extent that it exceeds the fees required by this section.

(c) No document required to be filed under this Ordinance shall be effective until the applicable fee required by this section is paid.





## SAINT REGIS MOHAWK TRIBE LEGISLATIVE ROUTING FORM

1. SUMMARY (TO BE COMPLETED BY SUBMITTER)	
A. Title of proposed legislation:	To Adopt the Saint Regis Mohawk Tribe Business Organizations Ordinance
B. Type of proposed legislation:	<input checked="" type="checkbox"/> Tribal Council Resolution <input type="checkbox"/> Tribal Regulation <input type="checkbox"/> Tribal Policy <input type="checkbox"/> Tribal Ordinance
C. Name/title of submitter:	Owen Herne
D. Date submitted to Office of Tribal Council:	2/11/2022
E. Deadline? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, when?	
F. Request for community review: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<i>Office of Tribal Council will notify the submitter and Tribal Clerk when legislation is ready for community review. The submitter is responsible for scheduling meeting dates and location(s) and notifying the Tribal Clerk, Tribal Council, and Legal of meeting dates (to be inserted in 5.b. i-iii).</i>
G. Do you need an original of the adopted legislation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<i>Once adopted legislation is filed, copies are available upon request from the Tribal Clerk's Office.</i>
CONTACT INFORMATION (TO BE COMPLETED BY NON-TRIBAL STAFF/TRIBAL MEMBERS)	
H. Tribal Enrollment Number:	
I. Address:	
J. Phone/e-mail address:	
ROUTING (TO BE COMPLETED BY OFFICE OF TRIBAL COUNCIL)	
2. Initial review period is five (5) business days for resolutions or thirty (30) calendar days for new laws, acts, or ordinances.	Begins: 2/14/2022 Expires: 2/21/2022
3. LEGAL DEPARTMENT REVIEW <i>Dale White</i>	
4. TRIBAL CLERK REVIEW	
5. COMMUNITY REVIEW (TO BE COMPLETED BY TRIBAL CLERK)	
a. Date Tribal Clerk posted for Community Review:	
b. Community Review period expires 30 calendar days from date listed in 5.a:	
i. Presented at a _____ Meeting held on:	
ii. Presented at a _____ Meeting held on:	
iii. Presented at a _____ Meeting held on:	
c. Date final draft prep period expires 30 calendar days from date listed in 5.b:	
d. Date Tribal Clerk's Office published Public Notice of Final Action:	
e. Period for Final Action expires 30 calendar days from 5.d:	
6. DATE ADOPTED	

