

TITLE 28
LUMMI NATION CODE OF LAWS
BUDGET AND FINANCE CODE

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**TITLE 28
LUMMI NATION CODE OF LAWS
BUDGET AND FINANCE CODE**

Chapter 28.01 Purpose

28.01.010 Purpose

The purpose of this Code is threefold. First, it is to control the use and expenditures of any and all Lummi Tribal funds, including but not limited to: funds generated from tribal ventures, utilities, and assets, and funds received through contracts, grants and gifts from other governments and entities, whether public or private. Thus, the Lummi Indian Business Council (LIBC), and its officers and employees, and all tribal programs and entities and their officers and employees are prohibited from expending funds except as authorized under the provisions of this Code. The LIBC Treasurer shall be obligated to oversee the preparation of an annual budget for the Lummi Nation and LIBC after first hearing the concerns and suggestions of the Lummi Community. The LIBC shall be obligated to approve a balanced budget authorizing all tribal expenditures for the coming year.

The second purpose of the Code is to establish an Investment Committee. The Investment Committee shall be the same members as stated in sections 28.03.020 and 28.03.030 of the Budget and Finance Code. The duties of the Investment Committee are to oversee and monitor tribal investments on no less than a quarterly basis and to review and periodically evaluate the tribal money managers and to implement and revise investment policy as needed.

The third purpose of this Code is to increase the opportunities for members of the Lummi Nation to participate in the budgeting process and to help set the Lummi Nation's priorities for the coming year. The LIBC recognizes the importance of the involvement and support of the tribal community in tribal government and desires to improve the opportunities for tribal members to effectively participate in the most crucial of government processes, the fiscal budget.

Chapter 28.02 Budget Process

28.02.010 Overview of the Budget Process

The annual budgeting process will require approximately three to seven months to prepare and adopt a budget for the coming fiscal year. The budget cycle will begin in January with a report to members of the Lummi Nation on how the Lummi Nation's funds were used in the previous year. On or before the last working day of January, the Treasurer will publish a calendar setting out timelines for the next year's budget cycle. This calendar is to be presented to and approved by the LIBC prior to publication.

(a) This initial public hearing will provide the community with an opportunity to express support or dissatisfaction with existing tribal programs and activities. Approximately one to six months later, after the community has been informed of LIBC's best estimate of funds expected to be available for appropriations in the coming year, the LIBC will conduct a second public hearing to discuss the community's priorities for use of these funds.

(b) The LIBC will then retreat to consider the community input and tribal needs and to develop the Business Council's appropriation priorities that will guide the LIBC Treasurer and the Budget Committee in their preparation of a Draft Budget.

(c) Once the LIBC has considered and approved a Draft Budget, a third public hearing will be held to explain the expenditure plan to the community and to solicit additional budget comments and recommendations from the Lummi membership.

(d) The Budget Committee will then consider these comments and, where appropriate, amend the Draft Budget and develop a proposed final budget and adopt a Final Budget Resolution by November. The approved Budget shall not obligate more funds than are reasonably expected to become

available for expenditure in the coming year (a “balanced budget” is required) and will guide all tribal spending throughout the coming year.

(e) Reports shall be presented in a format that is easy to read by a non-financial person.

(f) The approved Budget will be reviewed by the Budget Committee at least three times during the year to monitor budget compliance and to measure actual revenues with the forecasts. The Budget Committee will recommend modifications to the LIBC when needed to avoid expending more money than is actually available. The LIBC will be required to amend the Budget when necessary to maintain a balanced budget.

Chapter 28.03 Definitions

28.03.010 Fiscal Year

The Fiscal year of the tribe shall be from January 1 to December 31.

28.03.020 Tribal Money Manager

Brokerage firm or person who is selected by the tribe to invest tribal funds.

28.03.030 Budget Committee

The Budget Committee shall consist of one representative from each of the commissions officially designated by the LIBC. The Treasurer or Council designee will serve as Chairman.

28.03.040 Investment Committee

The Investment Committee shall consist of the same committee members referred to in 28.03.030 above. The Treasurer or Council designee will serve as Chairman.

28.03.050 Unrestricted Tribal Revenue

Unrestricted tribal revenues are those monies received or reasonably expected to be received by the LIBC or any of its subsidiary entities that are not encumbered by any legal requirements for their expenditure by the LIBC, or have only extremely broad expenditure guidelines associated with their use such as a requirement to report to the General Council or any other party the manner and purpose for which the funds were expended.

28.03.060 Restricted Tribal Revenue

Restricted tribal revenues are those moneys received or reasonably expected to be received by the LIBC or any of its subsidiary entities that by law, the terms of a grant or contract award, or other binding commitment by the LIBC must be expended, obligated, or reserved for specific programs, services, goods, or for identifiable functional purposes.

Chapter 28.04 Review of Past Efforts

28.04.010 Program Manager Reports

Not later than December 1st, each department head, program manager, venture manager, director, or manager of every tribal entity utilizing any funds requiring the approval or authority of the LIBC shall submit a report to either of the Executive Managers as is appropriate. These reports shall summarize the department’s goals and objectives for the previous twelve (12) months and cite its achievements. Department revenues and expenditures from all sources will be included. The Executive Managers, as appropriate, shall take necessary action to ensure that these reports are received on time and are complete and accurate.

28.04.020 Reports from Executive Managers to Lummi Community

The Executive Managers shall review, summarize, and compile the individual department reports into an annual Executive Manager’s report of the previous year’s activities to the Lummi community. These reports shall be published and made available to the Lummi community on the date specified in the annual Treasurer’s calendar.

28.04.030 Community Review of Past Efforts

A public hearing shall be held at a time specified in the Treasurer’s annual calendar to discuss the performance of the LIBC and its programs during the previous year. The members of the LIBC and the Executive Managers are each required to attend this meeting to present their reports and to answer questions posed by members of the Lummi community. The focus of this meeting shall be to examine the past year’s activities.

Chapter 28.05 Establishment of Budget Authority

28.05.010 Identification of Expected Available Funds

At the time specified in the Treasurer's annual calendar (or when the APFA is signed), the Finance Director shall provide a report to the Budget Committee describing the extent and nature of all tribal revenues anticipated to be received in the following fiscal year from every source, including but not limited to: grants and contracts from governmental or private sources; tribal taxes and fees; income from the lease of tribal assets; earned interest; collection of court judgments in favor of the tribe; tuition and other education related fees; tribal utility revenues; tribal venture sales; and all other tribal revenue.

28.05.020 Identification of Obligations on these Funds

The Finance Director and Executive Managers shall also identify known obligations or restrictions on the use of each of the revenues identified in section 28.05.010 and include this information in the report required in that Section.

28.05.030 Cooperation of All Tribal Entity Managers Required

The manager, director, president, chief executive, or other head of a tribal entity shall offer his complete cooperation in providing in a timely manner the revenue and obligations information needed by the Executive Managers to prepare the reports required in this Title.

28.05.040 Identification of Unrestricted Funds

The Budget Committee shall prepare a report at a time specified in the Treasurer's annual calendar to the LIBC identifying the source and extent of funds anticipated to be available for unrestricted obligation by the LIBC in the following fiscal year.

28.05.050 Reserve Requirements for Prior Obligations

The Budget Committee shall also provide a report to the LIBC identifying the extent of any funds that are recommended to be held in

reserve to meet obligations previously incurred by the tribe that will or are likely to come due during the coming fiscal year. The Budget Committee shall report to the LIBC the need for reserving unrestricted tribal funds to meet these obligations and the LIBC shall not budget these funds for any other purpose.

28.05.060 Allowance for Prior Obligations

The amount and nature of otherwise unrestricted tribal funds required to meet previous tribal obligations or requirements that are expected to come due during the coming fiscal year shall be noted in the Budget Authority Resolution and reserved from appropriation for any other purpose.

28.05.070 Discretionary Carryover Funds

Discretionary carryover funds shall not be estimated or become part of the initial budget due to their unpredictability. Upon completion of the Annual Audit in the following year a specific dollar amount can then be determined and then budgeted by an amendment to obligate these funds.

28.05.080 Permanent Fiscal Year Budget Package; Exceeding this Authority Prohibited

Once enacted, the Budget Authority Resolution shall become a permanent part of the tribe's Budget and the LIBC, its officers, staff, and all other persons authorized to budget, spend, or otherwise obligate tribal funds are prohibited from budgeting, obligating, or disbursing any funds not authorized under this Budget Authority or any duly approved amendments to this authority.

28.05.090 Publication of the Budget Authority

Within seven (7) days of its approval by the LIBC, the Treasurer shall publish the Budget Authority Resolution and make it available to members of the Lummi tribal Community. The Treasurer is authorized to include a summary of the Budget Authority Resolution if he feels it would help explain to members of the Lummi community the implications of the Budget Authority on the current budgeting process.

Chapter 28.06 Collection and Prioritization of Budget Requests

28.06.010 Community Input to the Needs Identification Process

The LIBC shall hold a second public hearing at a time specified in the Treasurer's annual calendar to hear community concerns related to the Draft Revenue Budget, requests for additional or different services from the tribal government, tribal policies that might require funds to implement and/or enforce, or other matters having an effect on the use of tribal monies or the need to increase tribal revenue.

28.06.020 Departmental Needs Assessment Hearing

The manager of each current tribal program, department, venture, utility, or other tribal entity shall prepare a work plan, budget, budget narrative and cost justification, list of anticipated sources and amounts of restricted use funds (e.g. grants, utility user fees, etc.), all anticipated venture or program revenues, and, if needed, a request for unrestricted tribal funds to support the proposed level of activity for that entity. These proposed budgets shall be presented to either of the Executive Managers. The Executive Managers shall review these budget requests for completeness and accuracy, and present their recommendations to the appropriate commission. The commission shall review these requests for completeness and accuracy and present them to the LIBC for approval. The LIBC shall have assurance that these budget requests are complete and accurate.

28.06.030 Prioritization of Community Needs and Use of Resources

LIBC shall retreat at a time specified in the Treasurer's annual calendar to discuss problems or issues facing the tribal community and shall rank these issues and the proposed actions to resolve the issues. This ranking of issues and actions shall be used by the LIBC and its Budget Committee to prioritize the budgeting of financial, human, and other tribal resources for the coming fiscal year.

Chapter 28.07 Preparation and Consideration of a Draft Budget

28.07.010 Draft Budget Prepared by the Budget Committee

The Budget Committee shall prepare and recommend for approval by the LIBC budgets for the expenditure or reserve of all restricted and unrestricted funds expected to become available to the tribe in the coming fiscal year. The Budget Committee shall give full consideration to the priorities established by the LIBC and shall attempt to fully utilize all available grants, contracts, and other non-tribal resources to maximize the effectiveness of tribal resources. The Draft Budget must not obligate more money than is reasonably expected to become available for obligation by the tribe in the coming fiscal year and must identify the source of the revenue that will support each expenditure.

28.07.020 Draft Budget Reviewed and Approved by LIBC

The LIBC shall review, amend, and approve the Budget Committee's recommendations as a Draft Budget at a duly called regular or special meeting as specified in the Treasurer's annual calendar. The approved Draft Budget must not obligate more funds than are expected to become available and must identify the source of revenues that will support each budgeted expenditure.

28.07.030 Draft Budget Published

The Treasurer shall have the approved Draft Budget published and made available for review by the Lummi community within seven (7) days of its approval by the LIBC.

28.07.040 Public Hearing Required

The Treasurer shall schedule a public hearing at a time specified in the Treasurer's annual calendar to provide members of the Lummi Nation an opportunity to comment on LIBC's Draft Budget.

Chapter 28.08 Preparation and Approval of a Final Budget

28.08.010 Approval of Final Budget Resolution by LIBC

The LIBC shall review the Budget Committee's recommended Final Budget and, if necessary, schedule a special meeting(s)

with the Budget Committee to discuss desired changes, additions, or deletions to the recommended Final Budget. The LIBC shall approve a Final Budget no later than at its first regularly scheduled meeting in December, as specified in the Treasurer's annual calendar.

28.08.020 Balanced Budget Required

The Budget Committee is prohibited from submitting and the LIBC is prohibited from approving a tribal budget that proposes to spend more tribal funds than are reasonably expected to become available to the tribe during that fiscal year.

28.08.030 Periodic Budget Reviews and Adjustments Required

The Budget Committee shall review and, when necessary, make recommendations to the LIBC to maintain a balanced budget throughout the year. The Budget Committee shall meet as often as may be necessary, but shall in any case meet in December prior to the start of the new fiscal year and in March and July during the fiscal year or at a time specified in the Treasurer's annual calendar to re-evaluate the revenue and expenditure forecasts. The Budget Committee shall compare the budgeted tribal revenue and expenses against the actual figures and re-forecast the anticipated end-of-year tribal funds balance. If it appears at that time that expenses will exceed revenues the Budget Committee shall report the cause of the revenue shortfall or expenditure over-run to the LIBC together with recommended actions needed to balance the budget. The LIBC shall adopt an amendment to the budget to correct the budget shortfall and the Treasurer shall be directed to implement the actions necessary to avoid the deficit. Budget Amendments shall be prepared and adopted at least quarterly throughout the year.

28.08.040 Expenditure of Unrealized Funds Prohibited

No tribal funds, including funds identified in an approved Budget, may be obligated or expended until the funds have been actually received by the tribe or for which a valid and enforceable contract for delivery of the funds has been made and the funds are reasonably

expected to be received (e.g. a U.S. government cost reimbursement contract).

Chapter 28.09 Assignment of Authority and Responsibility

28.09.010 Authority and Responsibility of LIBC

Except as otherwise provided in this Ordinance, the LIBC has no authority to deviate from this Ordinance, its procedures, or any budgets adopted under this Ordinance. Once the fiscal year budget is adopted, the authority of the LIBC is limited to budget oversight, except as otherwise provided herein. However, these limitations shall not prevent the LIBC from taking corrective action, when necessary, to ensure compliance with this Ordinance.

28.09.020 Authority and Responsibility of the Treasurer

The Tribal Treasurer shall be responsible for meeting the requirements of this Ordinance and any budgets adopted under it. The Treasurer shall report to the LIBC on behalf of the Budget Committee all requested or proposed changes or modifications to the approved Budget as well as any matters which might justify such changes or modifications. The Treasurer shall be responsible for assuring that the Executive Managers are at all times in compliance with the approved Budget. The Treasurer shall have overall administrative authority to carry out the terms of this ordinance. The Treasurer does not have the authority to amend or modify the approved Budget and shall not approve any expenditures not approved in the Budget or amendments to the Budget, except in the limited exercise of his emergency expenditure authority as described in section 28.10.020.

28.09.030 Authority and Responsibility of the Budget Committee

The Budget Committee shall be authorized to require the Executive Managers to provide historical, forecasted, and other fiscal data and reports as it deems necessary to develop the fiscal year Budget and assure that each entity of LIBC is fully complying with the adopted Budget. The Budget Committee may approve the reallocation of funds within a department,

program, or other element of the approved Budget as provided for in Section 28.10 as long as the total budgeted amount is not changed for the department, program, or element. The Budget Committee shall be required to meet not less than three times per year to re-evaluate the tribal Budget against updated forecasts. The Budget Committee shall be responsible for recommending to the LIBC amendments or modifications to the approved Budget when adjustments are warranted by changing conditions or improved information.

28.09.040 Authority and Responsibility of the Executive Managers

The Executive Managers shall be responsible for the full compliance of each department under their authority or responsibility with the approved Budget and shall take immediate corrective action necessary to bring a non-complying program back into compliance with this Ordinance and the approved Budget. The Manager shall regularly review the fiscal and programmatic compliance of each program and activity of the Tribe. The Manager shall have the authority to take any or all disciplinary actions against the manager of any program, department, entity, or any other person obligating tribal funds who has not, in the Manager's opinion, complied with this Ordinance. The Manager shall immediately report to the Budget Committee any information that indicates a tribal program, department, or other entity, may exceed its approved Budget and for which adequate corrective action cannot be taken to avoid the need for a modification to the approved Budget. The Manager shall have the authority to approve reallocations of funds within a program, department, or other tribal entity as provided for in Section 28.10, as long as the total amount budgeted for that entity does not increase.

28.09.050 Authority and Responsibility of the Finance Director

The Office of Management and Budget shall be responsible for developing and implementing policies and procedures to assure that every person authorized to spend or obligate LIBC funds is fully aware of the requirements of this Ordinance and the

approved Budget and that these persons receive accurate and timely financial reports on not less than a monthly basis.

28.09.060 Authority and Responsibility of the Accounting Office

The Accounting Office is responsible for developing, maintaining, and adhering to policies and procedures that prevent the release of funds for unapproved obligations. The Accounting Office is authorized to pay only those obligations which have been included in the approved Budget unless directed in writing by the Treasurer to pay additional obligations authorized in conjunction with emergency items described in Section 28.10.

28.09.070 Authority and Responsibility of Manager/Directors

All program managers have the direct day-to-day responsibility to assure that their programs are operated in compliance with the budgets approved under this Ordinance, as well as all other applicable laws and regulations. Program managers shall be directly responsible for obtaining monthly financial statements for their respective programs and projects and they are required to report immediately to the Executive Managers or their appropriate supervising manager or director, any deviations from their approved Budget. All managers are required to identify and report to the Executive Managers, in writing, any matters that prevent compliance with their program's legally adopted budget. This information is to be reported before any steps are taken which are not in compliance with the approved budget. If a program manager learns that an action has been or is about to be taken which is not in compliance with the program's approved Budget, the program manager becomes directly and immediately responsible for insuring that the problem is corrected whether or not he or she is directed to do so by the Manager or other authority. For the purpose of this section, the term "manager" shall include any director, manager, chief executive, or interim official who has direct control of or responsibility for the budget of a program, project, utility, venture, or any other tribal entity regardless of the time served in such position.

28.09.080 Limitations on Authority

Unless specifically authorized in this Ordinance, no person, whether elected, appointed, or employed in any position, department, or entity of the tribe, has the authority to deviate from this Ordinance. However, this Ordinance is not intended to, nor shall it be construed as preventing the LIBC, if acting in accordance with its overriding responsibility to the Lummi Indian Tribe, from taking any necessary action to protect and safeguard the rights, resources, or welfare of the Tribe.

Chapter 28.10 Regular & Emergency Budget Amendments and Over Expenditures

28.10.010 Approved Budget Line Items Over-Expenditures

In no case shall the approved Budget be modified except as provided for below. However, budgets are recognized as being plans to guide expenditures to meet stated and specific program objectives and that actual circumstances may make minor adjustments necessary to responsibly apply the budgeted funds to the program objectives. Adjustments to line items within a program budget shall be allowed within the limits set out below and subject to the approval and oversight of the appropriate authority.

28.10.020 Program Manager Authority

The manager of a tribal program shall be authorized to overspend any line item within that program’s budget by not more than five per cent (5%) of the total program’s budget as long as the total expenditures do not exceed the total Budget. This five (5%) threshold does not apply to line items whose dollars amounts are less than \$2,000, or some reasonable material amount. Prior approval must be obtained, as described in section 28.10.030 below, for any requested changes to NON-DIRECT COST BASE items, such as capital purchases and sub-contracts. However, in no case shall total program expenditures exceed the approved program budget. Necessary line item over-expenditures exceeding five per cent (5%) must be approved in advance as described below.

28.10.030 Executive Manager Authority

The Executive managers shall be authorized to approve a program manager’s request to overspend any budgeted line item within a tribal program by not more than fifteen per cent (15%) as long as the total expenditures do not exceed the total program’s budget and to approve requested changes to NON- DIRECT COST BASE items, such as capital purchases and sub-contracts. The fifteen percent (15%) threshold does not apply to line items whose dollar amounts are less than \$5,000, or some reasonable material amount. However, in no case shall total program expenditures exceed the approved program budget. In some cases, where reason dictates, a written plan may be necessary to demonstrate where necessary savings will be achieved elsewhere within the program to remain within the total program budget constraint.

28.10.040 Budget Committee Authority

The Budget Committee shall be authorized to approve a program manager’s request made through the Executive Managers to overspend a budgeted line item within a tribal program by not more than twenty five percent (25%) as long as the total expenditures do not exceed the total program’s budget. This twenty five percent (25%) threshold does not apply to line items whose dollar amounts are less than \$10,000 or some reasonable material amount. However, in no case shall total program expenditures exceed the approved budget. A written plan is necessary and must be presented to the Budget Committee demonstrating where sufficient savings will be realized in other line items within the same program to avoid exceeding the budgeted limit for the entire program.

28.10.050 Emergency Over-Expenditure or Unbudgeted Expenditures

The Treasurer may approve a payment for budget over-expenditures or unbudgeted expenses only if the payment is required by one of the following:

- (a) the obligation cannot be canceled by returning the goods purchased lawfully, canceling a contract for services, or by releasing the tribe from the obligation in some

other legal manner and non-payment of the obligation would cause significant harm to either the reputation or credit rating of the LIBC or the Lummi Nation; or

(b) at the Treasurer's discretion, a threat exists to the health, welfare, and or security of the tribe and its members that requires an expenditure of budgeted funds in excess of the approved budget amount or funds that have not been budgeted. The Treasurer's approval of such an over-expenditure or unbudgeted expenditure must be in writing and must include his rationale for approving the obligation or payment. The Treasurer shall also convene a Budget Committee meeting within seven (7) days of his approval of such an expenditure to prepare an amendment to the Budget incorporating the emergency expenditure and, if necessary, reducing other budgeted expenses to maintain a balanced budget. The Treasurer shall also report the budgeted expenditure to the LIBC at the next council meeting.

28.10.060 Regular Budget Amendments

Any proposed amendments or modifications to the approved Budget must either be initiated by a Commission or the Budget Committee. If three or more members of the Budget Committee recommend that the Budget be modified the Treasurer shall place the modification request on the LIBC agenda for final action. The Budget Committee shall prepare its written recommendation, or when all committee members do not agree, the various recommendations of its members, and present the recommendation(s) to the LIBC to facilitate discussion of the modification proposal. The LIBC may adopt an amendment to a duly authorized fiscal year Budget only after the issue has been noticed for at least two weeks on the LIBC's agenda and it has been discussed and voted on at a duly called LIBC meeting. An affirmative vote of a majority of the LIBC shall be required to modify the Budget.

28.10.070 Emergency Amendments

The LIBC retains the emergency power to reprogram any tribal funds if it is determined that a substantial threat exists to the Lummi Nation, its resources, or its rights. If the LIBC takes such emergency action, it shall, within

thirty (30) days, call a special LIBC session for the purpose of formally recording their action and for amending the Budget and Budget Authority Resolution where necessary to accommodate their changes and to authorize an amended balanced Budget. Nothing in this Ordinance shall require the Chairman, LIBC, or any other tribal officials, acting during such an emergency, to publicly disclose any information that could adversely impact the legal and/or political standing of the Lummi Nation.

28.10.080 Limitations of Amendments

No amendment to the Budget Authority Resolution, or to any authorized or proposed budget, becomes valid until such funds are realized. In addition, funds not contained in an approved fiscal year budget may not be advanced nor expended, including grant matching fund obligations, unless and until an amendment to the budget is adopted in accordance with this Ordinance.

Chapter 28.11 Enforcement

28.11.010 Personnel Policy Disciplinary Action

Any employee who exceeds his written spending authority as granted by the approved Budget or by his superior shall be subject to the disciplinary actions as described in the tribe's personnel policy manual. Disciplinary actions may include any or all of the following: written reprimand, probation, suspension without pay, termination, and/or payroll deductions to repay the unauthorized expenditure.

28.11.020 Court Actions

In addition to the disciplinary actions of section 28.11.010, the Lummi Nation may also take civil and/or criminal actions against an employee or former employee if it believes the employee's unauthorized expenditure(s) were either made willfully or recklessly with wanton disregard for the employee's responsibilities to protect the tribe and its assets and the employee's actions have caused the Lummi Nation significant harm. Such civil and/or criminal suits shall be made under existing or future tribal or federal laws prohibiting the misuse of tribal funds.

28.11.030 Council Sanctions

Any member of the LIBC may call for the removal of the Treasurer from the Budget Committee if they feel that the person has not properly performed his budgeting responsibilities or has exceeded or abused the authority granted under this Ordinance. A majority vote of the elected Council is required to vote to remove the Treasurer from the Budget Committee and a majority vote shall also be required to replace that Budget Committee member with another LIBC member. The removed member's responsibilities under this Ordinance shall then be assumed by the replacement member. Such a removal need not affect that member's official standing as an officer of the LIBC.

28.11.040 Limitations

Nothing in this Ordinance is intended to place limitations on any lawful powers of the LIBC, tribal officials, or tribal staff, other than those limitations specifically described in this Ordinance.

Chapter 28.12 Tribally-Owned Commercial Enterprises

28.12.010 Definitions

"Tribally-owned commercial enterprise" means any entity owned in or whole in part by the Lummi tribe which has as its purpose at least one of the following: (1) the generation of revenue for tribal government; (2) profit; or (3) the management, maintenance, or operation of other commercial, industrial, or fee-for-service entities; provided, however, that, "tribally-owned commercial enterprise" excludes publicly traded entities. For the sake of clarity, the Lummi Tobacco Company, Lummi Commercial Company, Silver Reef Casino, Lummi Development Holding Company, and Lummi Nation Construction Company are tribally-owned commercial enterprises. Quasi-enforcement and regulatory entities are not tribally-owned commercial enterprises; for the sake of clarity, tribal gaming authorities are not tribally-owned commercial enterprises.

28.12.020 Exemption of Tribally-Owned Commercial Enterprises

Tribally-owned commercial enterprises are exempt from this Title 28 except as provided in this Chapter 12.

28.12.030 Purpose of This Chapter

The intent of this Chapter is to ensure that tribally-owned commercial enterprises have the flexibility and authority necessary for their successful management, and to minimize politically-motivated interference, all while maintaining their character as an arm of the Lummi tribe and their ultimate oversight by the tribe, through the Lummi Indian Business Council.

28.12.040 Agreement with LIBC

LIBC and tribally-owned commercial enterprises shall cooperatively develop written memoranda of agreement or similar documents which address the distribution of income and taxes. Neither a TOCE nor LIBC shall unreasonably withhold approval of an agreement. Any policy or amendment thereto must be approved by the LIBC and the governing body of the enterprise. In the case of LIBC, such approval must be by 2/3 of the LIBC, which may not be accomplished via "walkaround" resolution or similar procedure. Such agreement shall include but not be limited to the following:

- (a) Procedures for an annual independent audit of the tribally-owned commercial enterprise and audit of the distribution of income and taxes;
- (b) That LIBC shall have the authority to examine, inspect, and copy books and records on reasonable notice, and audit on reasonable notice, except that if the LIBC has a reasonable suspicion of financial wrongdoing, it may examine, inspect, copy or audit without prior notice;
- (c) Distribution of income and taxes, which shall guarantee that TOCEs appropriately remit taxes or equivalent funds, and that each TOCE shall be able to meet its operating needs, including but not limited to operating expenses and debt payments, as well as addressing the TOCEs capital needs and reinvestment needs;
- (d) Safeguards to ensure that each tribally-owned commercial enterprise shall be

managed on a day-to-day basis free from undue political interference;

(e) That a material violation of the policy shall be deemed cause for removal from the board of a tribally-owned commercial enterprise as set forth in its charter and/or bylaws; likewise, that a material violation of the policy shall be deemed cause for removal from the LIBC under such procedures as LIBC may agree on among themselves in a resolution;

(f) A definition of financial materiality for transfers of income between the LIBC and tribally-owned commercial enterprise; and

(g) Procedures for reporting financial wrongdoing, whether or not such wrongdoing is a crime;

(h) Procedures for resolution of disputes between the LIBC and the TOCE; and

(i) To the extent that a TOCE owns a subsidiary or participates in a partnership, joint venture, or limited liability company, the agreement shall address the distribution of the TOCE share of income.

28.12.050 Anti-Fraud Measures

The LIBC Treasurer's Office shall be responsible for developing anti-fraud measures and enforcing them as appropriate.

28.12.060 Certification of Financial Statements

Every financial statement or budget of a TOCE on which the LIBC relies for its planning, budgetary, or other purposes, whether such statement or budget is forward-looking or not, shall include a certification that such statements and budget are true and accurate to the best of the TOCE's knowledge.

28.12.070 Verification of Financial Activity

The Treasurer shall have the authority to verify the financial activity of any TOCE, as the Treasurer deems necessary.

28.12.080 Audit

All TOCEs shall cause to be conducted an audit on at least an annual basis. The audit shall be conducted by a reputable, independent third party auditor. The audit shall include an

examination of whether distribution of income and taxes complies with the policies agreed to between LIBC and the TOCE. Copies of the audit report shall be provided to the LIBC on request.

Chapter 28.13 Severability

28.13.010 Severability

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect.

Chapter 28.14 Amendments to this Ordinance

28.14.010 Amendments to this Ordinance

This Ordinance may not be amended or repealed unless that action is approved by a three-fourths (3/4) affirmative vote of the LIBC taken at a regular duly called meeting of the Council, and only after the proposed action was publicly announced for at least 2 weeks prior to the meeting and the items were properly noted on the Council's agenda.

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