

Date Adopted: February 7, 2004
Resolution No. 2004-02-005
Amended: 11/20/04-Resolution 2004-08-013;
11/18/04-Resolution 2004-11-018
9/16/11-Resolution 2011-09-005
Subject: Ethics

TRIBAL COUNCIL ETHICS ORDINANCE

Samish Tribal Code §2.600

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§ 2.601

PURPOSE

Under the Samish Constitution, Tribal Council members are vested with authority to represent and act on behalf of the tribal membership and the Samish Indian Nation. The Tribal Council exercises broad legislative authority and exclusive legislative authority under the Constitution. As such, Tribal Council members have been invested with the sacred trust of the tribal membership. The purpose of this ordinance is to maintain and protect this solemn obligation by stating the ethical obligations of Tribal Council members, and setting forth the consequences for violating said obligations.

§ 2.602

POLICY

Members of the Tribal Council shall maintain high standards of honesty, integrity, fairness and impartiality in their conduct as Tribal Council members, and shall avoid any actions in their role as Tribal Council members which would adversely reflect on the Tribal Council or the Samish Indian Nation. Tribal Council members shall take action in the best interest of the Samish Indian Nation and the tribal membership, not in their personal interest. Tribal Council members shall carry out their duties and responsibilities in the highest ethical manner. Violation of this ordinance may be grounds for a recall election under Article V of the Samish Constitution.

§ 2.603

AUTHORITY

This ordinance is adopted pursuant to the legislative authority granted the Tribal Council at Article VI, Section 3 of the Samish Tribal Constitution, approved November 14, 2003, by Resolution of the Samish Tribal Council and adopted and ratified by vote of the Samish General Council on March 2, 2004.

§ 2.604

DEFINITIONS

(a) "**Closed Session**" shall mean a session of the Samish Tribal Council which is not open to the general public, but instead is limited to tribal members, as provided for in Section 2.108 (a) of the Tribal Council Rules of Procedure Ordinance. Closed Tribal Council sessions shall be commenced and adjourned by motion duly passed and shall not be recorded, except by Note of the Tribal Council. No final or official Tribal Council action shall be taken in closed session.

(b) "**Conflict of Interest**" for purposes of this ordinance means an action taken by a member of the Tribal Council which is in conflict with the Tribal Council member's obligation to take actions in the best interest of the Samish Indian Nation and the tribal membership. In most cases a conflict of interest arises because a Tribal Council member has taken action in his or her self or personal interest rather than in the interest of the Tribe or tribal membership as a whole. A conflict of interest does not arise when Tribal Council members disagree about a course of action or decision to take on a particular issue, and a Tribal Council member holds a sincere belief on the issue that differs from other Tribal Council members.

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(c) **"Executive Session"** as that term appears at Article II, Section 7 of the Samish Indian Nation Constitution by-laws means a session of the Tribal Council which is closed to all persons except Tribal Council members and such persons whose presence is required or requested by the Tribal Council. Executive Tribal Council session shall be commenced and adjourned by motion duly passed and shall not be recorded, except by Note of the Tribal Council. No final or official Tribal Council action shall be taken in executive session.

(d) **"Immediate Family"** means father, mother, son, daughter, husband, wife, brother, sister, granddaughter, grandson, any other person in a similar relationship, and any person living in the Tribal Council member's household.

(e) **"Personal Interest"** for purposes of this ordinance means an action taken by a Tribal Council member which is intended to benefit the Tribal Council member and/or his or her immediate family rather than the Samish Indian Nation or tribal membership as a whole. A Tribal Council member may act out of personal interest when he or she acts on a matter involving a general class of the tribal membership if the Tribal Council member's action was intended to benefit the member or his or her immediate family, even if the action also benefited other tribal members.¹ Personal interest does not necessarily occur when a Tribal Council acts on a matter or issue that results in an incidental benefit to the Tribal Council member or his or her immediate family.² Personal interest may be determined by an objective review of all of the circumstances surrounding and factors relevant to an action taken by a Tribal Council member.

(f) **"Special Advisor"** means any person or entity, other than a Tribal Council ad hoc committee, appointed by the Tribal Council to investigate an allegation of unethical conduct against a Tribal Council member. The Tribal Council may contract with an outside entity or person to be Special Advisor.

(g) **"Tribal Chairman"** shall mean the Chairman of the Samish Tribal Council. In any matter under this ordinance where the Tribal Chairman is the Tribal Council member alleged to have engaged in unethical conduct, the Vice-Chairman shall act in the capacity of Chairman under this ordinance. If both the Chairman and Vice-Chairman are accused of such conduct, the Secretary shall act in the capacity of Chairman under this ordinance or the remaining Tribal Council members shall approve one of their members to act in the capacity of Chairman for purposes of this ordinance.

§ 2.605 **ETHICAL OBLIGATIONS.**

(a) A Tribal Council member shall comply with all laws, directives, rules, policies and procedures heretofore issued and now in effect, and those which may be hereafter issued,

¹ A non-inclusive list of when personal interest occurs includes the following examples: 1) the member votes for a pay raise for a particular class of tribal employees because that member's daughter will benefit, when otherwise the member would oppose the pay raise; 2) the member votes on amendments to make recall of Tribal Council members more difficult when the member knows a recall petition is being circulated against him or her.

² A non-inclusive list of when personal interest would not be implicated includes the following examples: 1) a member who is an elder votes in favor of an elder's Christmas bonus; 2) a member votes to establish a tribal youth program that his or her daughter may participate in.

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which apply to said Tribal Council member in his or her status as a tribal member or as a member of the Tribal Council.

(b) A Tribal Council member shall not act as a representative of the Tribal Council or make statements to the media without express authorization of the Tribal Council or the Tribal Chairman. The Tribal Chairman is the official representative of the Samish Indian Nation and the Tribal Council unless that authority is otherwise delegated. This provision shall not prohibit a Tribal Council member from making public statements in the course of official duties, from explaining procedures of the Tribal Council for public information, from defending him or herself from a criminal charge or civil claim or testifying as a witness in a legal proceeding, or from responding to allegations concerning conduct made pursuant to this ordinance.

(c) A Tribal Council member shall not take any official action, whether in a Tribal Council meeting, committee meeting, or otherwise, in which the member has a personal interest which is or could be affected by such action. When a conflict of interest exists for a Tribal Council member with regard to a particular issue, the member shall not participate in any discussion or action with regard to such matter.

(d) A Tribal Council member shall attend all regular and special Tribal Council meetings, all General Council meetings, and all scheduled Tribal Council work sessions. A member shall notify the Tribal Chairman prior to any meeting they will not attend, with a valid excuse.³ Three (3) unexcused absences during a member's term shall constitute a violation of Samish Indian Nation Constitution, Article V, Section 1.

(e) A Tribal Council member who is convicted of a felony while in office may be removed from office by vote of the Tribal Council pursuant to Article VI, Section 4 of the Samish Tribal Constitution.

(f) A Tribal Council member shall not disclose materials presented or considered in executive or closed session, or discussions which took place in executive or closed session, outside of executive or closed session, except by consensus of the full Tribal Council.

(g) A Tribal Council member shall not accept on his or her own behalf individual gifts valued at over \$350. Gifts valued at over \$351 shall be the property of the Samish Indian Nation, and shall be turned over to the tribal property officer.

(h) A Tribal Council member may become or remain employed as a tribal employee. A tribal member who becomes a Tribal Council member shall retain his or her employment upon being sworn into office. A Tribal Council member must recuse him or herself from any Tribal Council vote which directly or indirectly impacts his or her employment duties as a tribal employee - whether funding or personal matters.

(i) A Tribal Council member shall continue any and all appointments obtained in his or her capacity as a Tribal Council member only so long as he or she continues in office. A member shall immediately resign from all such appointments upon completion of his

³ A non-inclusive list of what is a valid excuse includes the following examples: 1) personal illness; 2) illness in the immediate family; 3) work obligations that cannot be altered or changed; 4) other Tribal Council business; 5) funerals; 6) hazardous weather conditions; 7) occurrences beyond the control of the member; 8) vacation; 9) other situations as accepted by the Tribal Council.

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or her Tribal Council term, or upon otherwise leaving office.

- (j) A Tribal Council member shall return all tribal equipment, supplies and any other tribal property to the Tribe within thirty (30) days of completing office, or upon otherwise leaving office unless otherwise approved by Tribal Council resolution.
- (k) Tribal Council members shall not direct or attempt to control the daily work activities of Tribal administration employees, with the exception of those employees supervised by Tribal Council. Tribal administration and Tribal employees shall not attempt to direct or control the activities of the Samish Tribal Council or individual Tribal members.

§ 2.606

VIOLATION PROCEDURE.

Alleged violations of this ordinance shall be processed in the following manner:

- (a) **Role of the Tribal Council.** The Tribal Council shall be responsible for processing alleged ethical violations under this ordinance.
- (b) **Ethical Allegations.** Allegations of unethical conduct as defined in this ordinance by a Tribal Council member shall be presented to the Tribal Council and processed in the following manner:

- (1) Allegations of unethical conduct against a Tribal Council member shall be made in writing and submitted to the Tribal Council Chairman, *provided* that if an allegation is made against the Tribal Council Chairman, said allegation shall be filed with the Vice-Chairman. Submission to the Tribal Council Secretary shall be construed as delivery to the appropriate Tribal Council officer.

- (2) A written complaint may be submitted by any person who believes that a Tribal Council member has engaged in unethical conduct as defined by this ordinance. The complaint shall specify the Tribal Council member against whom a complaint of unethical conduct is being made, and the conduct that is alleged to be unethical.

- (3) A Tribal Council member may make an oral allegation of unethical conduct against another Tribal Council member during a regular or special Tribal Council meeting, and a tribal member may make an oral allegation of unethical conduct against a Tribal Council member during a scheduled General Council meeting. Such an oral allegation shall be treated the same as the submission of a written allegation. The Tribal Chairman may ask the person making such an oral allegation questions sufficient to clarify: (1) the Tribal Council member against whom the allegation is being made; (2) the nature of the allegation; and (3) to reduce the allegation to writing.

- (4) If an allegation of unethical conduct on the part of a Tribal Council member involves action which allegedly wronged a person and the allegation is made by someone other than the person against whom the unethical conduct allegedly occurred, the person against whom the unethical conduct allegedly occurred shall be notified in writing of the allegation and asked to submit their views on said allegation.

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(c) Initial Review of Allegation. The Tribal Council shall perform an initial review in executive session of an allegation of unethical conduct on the part of a Tribal Council member. This initial review may be conducted at the time the allegation is made, or at any subsequent time during a regular or special Tribal Council meeting, *provided* that such review shall take place no later than thirty (30) days after it has been submitted. The purpose of the initial review shall be to determine whether the allegation made falls within the scope of this ordinance and whether, assuming the facts alleged are true, said facts would support a determination of unethical conduct. The Tribal Council member against whom the allegation is made shall not participate in the initial review.

(d) Investigation. If the Tribal Council, upon completion of the initial review, determines that the allegation falls within the scope of this ordinance and alleges facts which, if true, might support a determination of unethical conduct, the Tribal Council shall refer the allegation for investigation as specified below. The Tribal Council member against whom the allegation is made shall be provided with a copy of the allegation, or if made orally, a written summary of the allegation. Tribal Council determination that an allegation requires further investigation shall not be a final decision of the Tribal Council which must be made in open session.

(1) Such investigation may be performed by an ad hoc committee of the Tribal Council or by a Special Advisor approved by the Tribal Council. If the Tribal Council does not approve a Special Advisor, the Tribal Chairman shall appoint one.

(2) The investigator, whether an ad hoc Tribal Council committee or Special Advisor, shall have the authority to take testimony under oath, to issue subpoenas, and to compel the production of documents and other evidence. The Tribal Council member against whom an allegation is made, the person allegedly wronged by the Tribal Council member's action, if any, members of the Tribal Council and the tribal attorney shall have the right to be present when sworn testimony is given.

(e) Hearing. The results of the investigation shall be presented to the Tribal Council in executive session, in a hearing at which the Tribal Council member against whom the allegation is made, his or her spokesperson, the tribal attorney, the complainant, and the person allegedly wronged by the Tribal Council member's action, if any, may be present and may present evidence, cross examine witnesses, and question the investigator.

(1) The investigator shall notify the Tribal Chairman of the completion of the investigation or of a date when the investigation will be completed. If the investigation will take longer than thirty (30) days to complete, the investigator shall obtain the approval of the Tribal Chairman to extend the investigation for a specified period of time.

(2) Any investigation performed under this ordinance shall be completed by the issuance of a written report which summarizes the evidence, gives an opinion on the issue of whether the allegation is true or false and, if said opinion is that the allegation is true, recommends a sanction, if any, to be imposed on the Tribal Council member.

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(3) Upon receipt of the investigation report, the Tribal Chairman shall send notice, by certified mail, to the Tribal Council member accused of the ethical violation, the complainant, and the person allegedly wronged by the Tribal Council member's actions, if any, setting a hearing date and time at a Tribal Council meeting not less than ten (10) and not more than forty-five (45) days from the date of the notice, at which the investigation report will be presented and the hearing will take place. A copy of the investigation report shall be included with such notice, along with a statement declaring that the report shall be kept confidential and not disclosed to any other person except the Tribal Council member's spokesperson.

(4) The hearing shall take place in executive session, and shall be recorded. Only the Tribal Council, Tribal Council Executive Secretary, tribal attorney, complainant, person allegedly wronged by the Tribal Council member's actions, if any, Tribal Council member accused of an ethical violation and his or her spokesperson shall be present during the hearing, *provided*, that witnesses may be called into the Tribal Council executive session to testify.

(f) Deliberation. At the conclusion of the hearing, the Tribal Council member accused of an ethical violation, complainant, and the person allegedly wronged by the Tribal Council member's actions, if any, shall be excused from the executive session so the Tribal Council may review the evidence and consider a decision and sanction, if any.

(g) Decision. The Tribal Council shall decide in open Tribal Council session, by recorded vote, whether an ethical violation under this ordinance has occurred. Said decision shall be made by a vote of 2/3 of the entire Tribal Council. If the Tribal Council decides that an ethical violation has occurred, the Tribal Council shall then decide, by motion, an appropriate sanction, if any, to impose on the Tribal Council member who engaged in the unethical conduct.

§ 2.607

SANCTIONS.

The Tribal Council may impose a sanction or sanctions against any Tribal Council member who is found to have engaged in unethical conduct under this ordinance. Such sanctions may include, but shall not be limited to, the following:

- (a)** reprimand, which is defined as a public censure or condemnation administered by the Tribal Council;
- (b)** restitution;
- (c)** suspension;
- (d)** expulsion.

Expulsion must follow the requirements set forth in Article V, Section 4 of the Samish Indian Nation Constitution. A suspension shall not exceed three (3) months for any specific violation.

§ 2.608

APPEAL.

Any Tribal Council member who is found to have violated this ordinance and against whom sanctions have been imposed by the Tribal Council shall have a right to appeal such determinations to the Samish Tribal Court pursuant to the Samish Tribal Court Rules and Procedures Ordinance. If the Tribal Council determines that an allegation of unethical conduct on the part of a Tribal Council member has been submitted for purposes of harassment or for other improper purposes, or is completely without merit,

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the Tribal Council member against whom such allegation is made may seek damages or other appropriate relief in Tribal Court.

§ 2.609 **CONFIDENTIALITY.**

Tribal Council members, the complainant, any person allegedly wronged by the Tribal Council member's actions, if any, and any other person involved with investigation or review of an ethical violation under this ordinance shall keep all information obtained in the process set out under this ordinance confidential, unless otherwise ordered by a court of competent jurisdiction. The investigation report prepared pursuant to this ordinance shall be confidential. A complainant or person allegedly wronged by the Tribal Council member's action, if any, shall be required to execute a pledge of confidentiality before being provided a copy of the investigation report, and shall be subject to a fine not to exceed \$1,000.00 for violation of said pledge. Any fine collected pursuant to this section shall be credited to the Tribe's General Fund. Violation of this section shall be a violation of this ordinance for Tribal Council members, grounds for discipline of tribal employees, and grounds for any appropriate sanctions for other persons.

§ 2.610 **ROLE OF TRIBAL COUNCIL MEMBER ACCUSED OF ETHICAL VIOLATION.**

A Tribal Council member against whom an allegation of unethical conduct under this ordinance is made shall not participate in review of the allegation by the Tribal Council, consideration by the Tribal Council of whether unethical conduct occurred and an appropriate sanction for such conduct, or voting in open session on whether an ethical violation occurred and on an appropriate sanction.

§ 2.611 **SEVERABILITY.**

If any provision of this ordinance shall be held unconstitutional or invalid by the Samish Tribal Court, only the invalid provision or language shall be severed and the remaining provisions and language of this ordinance shall remain in full force and effect.