

Saginaw Chippewa Indian Tribe of Michigan

ORDINANCE 38
Mno-shkiziwin Ordinance
(Supplemental Assistance Ordinance)

Amended November 29, 2023
By Resolution 24-040

ORDINANCE 38
MNO-SHKIZIWIN ORDINANCE (SUPPLEMENTAL ASSISTANCE ORDINANCE)

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ORDINANCE 38
MNO-SHKIZIWIN ORDINANCE
(SUPPLEMENTAL ASSISTANCE ORDINANCE)

Section 1. Short Title

This Ordinance may be cited as the "Mno-Shkiziwin Ordinance or Supplemental Assistance Ordinance."

Section 2. Purpose

- a. The Tribal General Welfare Exclusion Act of 2014 (codified at 26 U.S.C. § 139E et seq.), recognizes the sovereign right of Indian tribal governments to provide certain financial assistance to their citizens on a non-taxable basis. The Saginaw Chippewa Tribe of Michigan ("Tribe"), is a federally-recognized Indian Tribe, and exercises its inherent sovereign right to promote the general welfare of the Tribe and its members, its self-determination, culture, and tradition, by providing assistance programs to Tribal members and the community.
- b. The purpose of this Ordinance is to provide requirements for Saginaw Chippewa Indian Tribal programs established consistent with the Tribal General Welfare Exclusion Act to promote public health, safety and provide basic need services such as food, utilities, housing, education assistance and other such functions that support the general welfare of the Tribe.
- c. Traditionally, the Tribe has provided assistance that promotes the general welfare and best interests of the Tribe. The Tribe recognizes that creating a supplemental assistance ordinance will benefit the Tribe and Tribal members by protecting essential and cultural needs and enhancing the services that are provided by Tribal government programs to meet these needs.
- d. To ensure that all assistance provided under this Ordinance is tax-free as provided under the Tribal General Welfare Exclusion Act, supplemental assistance must:
 - i. Be made under a Tribal Approved Program;
 - ii. Be available to any Applicant who satisfies the program requirements, subject to budgetary restraints;
 - iii. Be made under an Approved Program that does not discriminate between similarly situated eligible persons or in favor of members of the Tribal Council;

- iv. Not be provided as compensation for goods and/or services; and
- v. Not be lavish or extravagant under the facts and circumstances, as determined by the Tribal Council.

Section 3. Definitions. The following definitions shall apply for purposes of this Ordinance and Approved Programs.

- a. "ACFS" means Anishnaabeg Child and Family Services of the Saginaw Chippewa Indian Tribe.
- b. "Applicant(s)" means an enrolled Tribal member of the Saginaw Chippewa Indian Tribe of Michigan who has applied for Assistance under this Ordinance.
- c. "Approved Program(s)" means any program or programs approved by the Tribal Council to provide general welfare assistance to Applicants intended to qualify for treatment under the General Welfare Doctrine, as defined herein.
- d. "Assistance" or "Supplemental Assistance" means any Program benefits or payments that qualify for tax free treatment under the General Welfare Exclusion.
- e. "Beneficiary" means any person or persons entitled to receive Assistance in accordance with specific Program policies and are exempted under Internal Revenue Code, Section 139E and may benefit, including: Tribal members spouses of a Tribal member, and/or dependents of a Tribal member.
- f. "Code" means the Internal Revenue Code of 1986, as amended.
- g. "Constitution" means the Constitution of the Saginaw Chippewa Indian Tribe of Michigan.
- h. "Custodial Parent or Guardian" means the parent(s) or guardian(s) with whom the minor child has physically resided for at least 51% of the time during the three months prior to any supplemental assistance payment and who provided at least 51% of the support of the minor during the same period.
- i. "Director" means the Director of Tribal Business Regulations and Tax.
- j. "Disabled Tribal Member" means a Tribal Member who has been determined by the United States Social Security Administration to be

eligible for benefits under the Social Security Disability Insurance program (SSDI) or the Supplemental Security Income program (SSI).

- k. "General Test" means any assistance will be treated as meeting the General Test under the General Welfare Exclusion if the benefits are:
 - i. Paid by or on behalf of an Indian tribe;
 - ii. Under a social benefit program;
 - iii. Based on either needs of the Indian community itself or upon individual needs of the recipient (which need not be financial in nature);
 - iv. not Compensation for services;
 - v. not gaming per capita payments as referenced in the Indian Gaming Regulatory Act.
- l. "General Welfare Exclusion" or "General Welfare Doctrine" means any assistance treated as non-taxable so long as it satisfies the requirements for exclusion under the Tribal General Welfare Exclusion Act and its corresponding regulations.
- m. "Incompetent" shall mean a Tribal Member who has received and is currently subject to a determination of incompetency by a court of competent jurisdiction.
- n. "Indian Gaming Regulatory Act", "IGRA" means the United States federal law that establishes the jurisdictional framework that governs Indian gaming, Federal Act (Pub. L. 100- 497, 25 U.S.C. § 2701 et seq.).
- o. "Lavish" or "Extravagant" shall have the meaning determined by the Tribal Council in its sole discretion based on all facts and circumstances, taking into account needs unique to the Tribe as well as the social purpose being served by the Assistance and consistent with federal law and regulation.
- p. "Life Changing Event" shall mean any of the following occurrences by the Recipient/Applicant: mental or physical incapacity estimated over six months, marriage/divorce, or a change in number of dependents.
- q. "Natural Disaster" means a catastrophic flood, fire or other natural occurrence that causes financial hardship resulting in a change in circumstance to a Recipient or an Applicant.

- r. "Open Application Period" means any date, during normal business hours, on or before December 15, 2023 and the period of time beginning August 1st and ending November 1st of each year thereafter.
- s. "RAP" shall mean the Saginaw Chippewa Indian Tribe of Michigan Tribal Gaming Revenue Allocation Plan duly approved by the Tribal Council and the United State Secretary of Interior as amended.
- t. "Recipient" means an Applicant who receives Supplemental Assistance.
- u. "Safe Harbor Program" shall mean a Program that meets the safe harbor requirements set forth herein and IRS Revenue Procedure 2014-35, as the same may hereafter be amended. Need shall be presumed for Assistance provided under a Safe Harbor Program.
- v. "Supplemental Assistance Program" shall mean any Assistance provided by an Approved Program pursuant to this Ordinance.
- w. "Tribal Council" or "Council" means the Council Members of the Saginaw Chippewa Indian Tribe of Michigan.
- x. "Tribal General Welfare Exclusion Act" means the federal Tribal General Welfare Exclusion Act codified at 26 U.S.C. § 139E et seq.
- y. "Tribal Member" means an enrolled member of the Saginaw Chippewa Indian Tribe of Michigan.
- z. "Tribal Member Elder" means a Tribal member who is 55 years of age or older.
- aa. "Tribal Member Minor" means a Tribal member who is less than 18 years of age.

Section 4. General Welfare Doctrine and IRS Revenue Procedure 2014-35/Tribal General Welfare Exclusion of 2014

- a. The Internal Revenue Service recognizes that Assistance to Applicants under a legislatively provided Approved Program for the promotion of the general welfare of the Tribe is excludable from the gross income of those Applicants.
- b. In addition, the Internal Revenue Service, in IRS Revenue Procedure 2014-35, provided for safe harbor programs under which, if approved

and in writing, need will be presumed and qualifying benefits will be excluded from gross income.

- c. The Assistance authorized by this Ordinance is intended to qualify for favorable tax treatment under the General Welfare Doctrine to the fullest extent permitted at law. All amounts budgeted by the Tribe for Assistance shall remain general assets of the Tribe until such payments are disbursed.
- d. Assistance is not subject to information reporting by the Tribe to the Internal Revenue Service.
- e. Without limitation, the following benefits shall be treated as non-taxable hereunder:
 - i. Benefits that satisfy the requirements for the exemption of the General Welfare Exclusion;
 - ii. Benefits that qualify for exclusion under an IRS Safe Harbor Program;
 - iii. Benefits that qualify for exclusion under the IRS General Test of General Welfare exclusion; or
 - iv. Benefits that meet another express exemption under the Internal Revenues Code, such as the exemption provided for tribal medical expenses under Internal Revenue Code Section 139D, or that meet other recognized exemptions including, for example, resource or land-based exemptions under 25 USC Sections 117a-b, 1407 and 1408.

Section 5. Authority and Construction

- a. The Tribal Council has the authority to enact this Ordinance and establish a supplemental assistance program pursuant to Article VI-Sections 1.(e), 1.(i), 1.(j) 1.(n), 1.(o) and 1(q) of the Tribal Constitution.
- b. The Tribal Council enacts this Ordinance in accordance with Sections I.B. and II. A.4. of the Tribe's Gaming Revenue Allocation Plan, as amended, which provides that the Tribe may use net revenue from its gaming operations to provide for Tribal assistance programs established pursuant to the Tribal General Welfare Exclusion Act.
- c. This Ordinance shall be construed and Approved Programs shall be administered consistent with purpose of this Ordinance.

- d. All the rights and liabilities associated with the enactment of this Ordinance, and any Assistance made hereunder, shall be construed and enforced according to the laws of the Tribe.
- e. Nothing in this Ordinance or the related rules, policies or procedures adopted for its implementation, if any, shall be construed to make applicable to the Tribe any laws or regulations 1) which are otherwise inapplicable to the Tribe, or 2) from which the Tribe is entitled to exemption.
- f. Assistance provided to Recipients under this Ordinance shall be excluded from gross income and shall not be considered income to the Recipient for any court judgment or order including, but not limited to, calculations for purposes of establishing child support or spousal support.
- g. The Director shall promulgate rules and procedures consistent with this Ordinance and necessary for its implementation. Such rules and procedures shall become effective upon approval by formal action of the Tribal Council.

Section 6. Ratification of Prior Acts; Intent of Legislation

- a. This Ordinance does not establish a new program or programs. This Ordinance is intended to establish requirements for new general welfare programs and to provide a means to ratify existing programs used in the administration of current general welfare assistance and services. This Ordinance should not be construed as creating any new general welfare assistance rights.
- b. Assistance provided by the Tribe prior to the enactment of this Ordinance and meeting the requirements herein, may be ratified and confirmed as general welfare assistance as provided herein.

Section 7. Non-resource Designation

- a. Assistance to Applicants shall be made from the assets of the Tribal government and all payments are subject to the availability of budgeted Tribal government funds.
- b. The Tribe does not guarantee Assistance under this Ordinance. Assistance shall not be treated as a resource of an Applicant for any purpose.

Section 8. Federal Trust Obligations

- a. The Tribe reserves the right to provide Assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit Applicants and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations.
- b. The Tribe's adoption of its Approved Programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Tribe's right to seek funding shortfalls or to enforce the trust rights of the Tribe and its members.

Section 9. Tribal Council Approved Programs

- a. The Tribal Council shall designate Approved Programs for which funds will be budgeted each fiscal year, consistent with the purposes of this Ordinance. Each Approved Program shall be consistent with this Ordinance and the General Welfare Doctrine as to purpose, eligibility, and funding.
- b. Tribal Council reserves the right to cancel, adjust, modify or revoke any Assistance provided by the Tribe when necessary to protect the finances of the Tribe.

Section 10. Purpose of Approved Programs

- a. Approved Programs must be established and operated to promote the general welfare of the Tribe, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, Tribal character and the maintenance of culture and tradition, entrepreneurship, and employment.
- b. Each Approved Program shall set forth the specific eligibility rules and limitations applied to each Approved Program. Program descriptions and policies, which include eligibility rules and limitations, shall not be effective until approved by formal action of the Tribal Council.

Section 11. Eligibility

- a. Assistance shall be limited to enrolled members of the Tribe and other Beneficiaries. Tribal members shall be eligible to receive Supplemental Assistance pursuant to this Ordinance in lieu of eligible per capita payments made pursuant to the Tribal RAP.
- b. Supplemental Assistance will be provided solely from the percentage approved by the Director in lieu of the Tribal member's per capita

payment available under the RAP. Supplemental Assistance requests will be made as a percentage of a Tribal member's per capita payment pursuant to the RAP and this Ordinance. Such percentage allocation will be in an amount equal to the amount of Supplemental Assistance for which a Tribal member is qualified and in a percentage amount or amounts established by Tribal Council which amounts shall not exceed 75% of eligible per capita payments for the Tribal member as provided by the RAP except as otherwise provided in this Ordinance.

- c. Supplemental Assistance for Tribal Members who are only eligible to receive a percentage of per capita payments under the graduated payment structure of Section II.A.1. of the RAP, shall be eligible to receive up to 100% of their eligible per capita payments as Supplemental Assistance provided that such Tribal Members shall not be eligible to receive an amount in Supplemental Assistance greater than the maximum amount available to Tribal Members under Subsection 11.b. of this Ordinance.
- d. Tribal Member Elders and Disabled Tribal Members shall be eligible to receive up to 100% of their eligible per capita payments as Supplemental Assistance.
- e. Supplemental Assistance for Tribal Members who are adjudged incompetent by a court of competent jurisdiction shall be eligible to receive up to 100% of their eligible per capita payments as Supplemental Assistance.
- f. Tribal Member minors shall only be eligible for a 100% allocation of the Tribal member minor's per capita payment per quarter.
- g. Any amount of per capita payments legally obligated by order of any court of competent jurisdiction, including but not limited to garnishment orders, shall not be eligible for allocation for supplemental assistance.
- h. Supplemental Assistance shall only be payable to the Recipient.
- i. Payments to a qualified Recipient shall commence on a date determined by the Director and approved by the Tribal Council and shall be made to Recipients once per quarter thereafter.
- j. Recipients shall cease to be eligible for Supplemental Assistance upon his/her death and no payment on account of such deceased Recipient shall be made to his/her estate or heirs for purposes consistent with this Ordinance; except that any Recipient who has qualified payments during a quarter dies after the beginning of the quarter but before the

disbursement of all the payments scheduled for that quarter, all remaining payments for that quarter will be made to the deceased's estate. The personal representative and heirs of a deceased Recipient shall be responsible for promptly notifying the Tribe of the Recipient's death by submitting a copy of the Recipient's death certificate to the Director. The Tribe may recover any Supplemental Assistance payment that is wrongfully claimed by a deceased Recipient's estate or heirs, or by any other person, in an action brought in Tribal Court, or if the person who retained the payment is a Tribal Member, by deducting the payments, plus interest at the legal rate, from any per capita payments to which the Tribal Member may be entitled pursuant to the RAP.

- k. Recipients shall immediately notify the Director in writing of any changes which would affect the Recipient's ability to meet the eligibility requirements.

Section 12. Application Procedures

- a. An application for Supplemental Assistance must be made by eligible Tribal members, and approved by the Tribe, as provided herein to qualify for any Supplemental Assistance under this Ordinance or any Approved Program.
- b. Applications shall be made to the Director on a form and manner approved by the Tribal Council. All Applications for Supplemental Assistance shall include at a minimum:
 - i. Full name and signature of the Tribal member.
 - ii. If the applicant is a Tribal member who has a legal guardian or conservator duly appointed by a court of competent jurisdiction then the full name of the Tribal member and guardian or conservator and signature of the legal guardian or conservator. Information substantiating guardianship or conservatorship must be provided with the application. The Applicant and guardian or conservator must comply with any request by the Director for additional information which the Director reasonably believes is necessary to verify guardianship.
 - iii. If the application is on behalf of a Tribal member minor then full name of the Tribal member minor and full name and signature of the custodial parent or legal guardian of the Tribal member minor submitting an application on behalf of the minor. Information substantiating guardianship or parentage

of a Tribal member minor must be provided with the application. The Applicant must comply with any request by the Director for additional information which the Director reasonably believes is necessary to verify guardianship or parentage. Applications for Tribal member minor children must be made on behalf of, and include, all Tribal member minor children in the custody of the custodial parent or guardian and must also include a notarized, signed affidavit from the custodial parent or guardian that attests that all Assistance provided to or on behalf of a Tribal member minor child will be used solely for and on behalf of the Tribal member minor child consistent with the application, this Ordinance and an Approved Program.

- iv. The full name Beneficiary otherwise qualified for Supplemental Assistance.
 - v. Percentage of Supplemental Assistance requested in lieu of per capita payments.
 - vi. The amount and terms, if any, of any per capita payments that are subject to any garnishment order or other order of any court.
 - vii. Any additional requirements deemed necessary by the Tribal Council to protect the finances of the Tribe and to ensure compliance with applicable law and policy consistent with this Ordinance.
 - viii. Any other information required in the application approved by the Tribal Council.
- c. Applications for adult Supplemental Assistance shall be made annually to the Director's Office during the Open Application Period except as provided in Subsection 12.e. for Tribal members turning 18 years of age or in Section 17 (Life Changing Events and Changes to Eligibility) of this Ordinance.
 - d. Applications for Tribal member minors shall be filed each quarter on a schedule determined each year by the Tribal Council.
 - e. Beginning in the year that a Tribal member turns 18 years of age, he/she shall have the option to file his/her first application as an adult for Supplemental Assistance thirty (30) calendar days after meeting the eligibility requirements to receive adult per capita payments under the RAP. Supplemental Assistance payments shall

begin with the next scheduled pay cycle after approval of an application under this Subsection. Per capita payments held by the Tribe on behalf of the Tribal member pending eligibility for adult per capita payments under the RAP, shall not qualify for Supplemental Assistance. The option to file an application under this Subsection shall expire on or before the Tribal member's 20th birthday. All subsequent applications shall be made by the Tribal member during the Open Application Period as provided by this Ordinance.

Section 13. Court Ward/Applications and Assistance Payments

- a. Wards of Saginaw Chippewa Tribal Court. Minors who have been temporary or permanent wards of the Saginaw Chippewa Tribal Court for at least 51% of the time during the previous quarter shall be considered to have been in the care and custody of the Tribal Court, and payments for such Minors shall be made to the Tribal Court, provided that all other requirements of this Ordinance have been satisfied. Applications for supplemental assistance may be submitted on behalf of the Tribal Court by ACFS. Unless otherwise authorized by the Tribal Court, payments to minors who are wards of Tribal Court shall be held in an account, and ACFS shall provide the Tribal Court with a quarterly statement regarding withdrawals, deposits and interest income for all such accounts. Supplemental assistance payments shall be used in accordance with this Ordinance.
- b. Wards of Other Courts. Minors who have been temporary or permanent wards of a court other than the Saginaw Chippewa Tribal Court for at least 51% of the time during the previous quarter shall be considered to have been in the care and custody of that court, and payments for such minors shall be made to ACFS, provided that all other requirements of this Ordinance have been satisfied. Applications for supplemental assistance may be submitted on behalf of the court by ACFS. ACFS shall hold all such payments in an account for the benefit of the minor and may disburse funds from that account, in accordance with this Ordinance, to the court having jurisdiction over the minor's case upon application of the local social services agency that has responsibility for the ward's case. The local social services agency shall be required to submit a quarterly report to ACFS listing and describing all expenditures of funds disbursed hereunder.

Section 14. Application Review

- a. The Director shall review timely applications and shall approve and process an Applicant eligible for supplemental benefits pursuant to this Ordinance.

- b. If after review of an application, the Director determines that an Applicant is not eligible for Supplemental Assistance, the Director shall issue a denial to the applicant in writing.
- c. The Director shall state the reason or reasons for denial and the applicant may provide additional information to the Director addressing the issue or issues of the denial. Such additional information must be provided in writing to the Director in a form and manner approved by the Director no later than 14 calendar days after the date of the denial.
- d. The Director shall review additional information timely submitted and approve the application in conformance with this Ordinance or issue a final denial to the applicant in writing no later than fourteen (14) calendar days after the Director's timely receipt of additional information.
- e. The Director's final denial shall be final for the Tribe subject to appeal as provided in this Ordinance. The Tribe shall have the right to deny any application that is not made in conformance with this Ordinance or any application or policy requirements thereof.

Section 15. Eligibility Renewals

- a. Recipients who wish to renew Supplemental Assistance for another year must submit a request for renewal to the Director during the Open Application Period each year certifying that there are no changes to the Recipient's eligibility based upon the Recipient's original application for Supplemental Assistance. Recipients shall only be eligible to apply to renew their Supplemental Assistance under this Section if they were previously approved for Assistance under this Ordinance and received Assistance in the year preceding the renewal.
- b. A request for renewal shall be provided in a manner and form approved by the Director.
- c. The Director may require additional documentation or evidence of eligibility from the Recipient as deemed necessary, in the reasonable discretion of the Director, to validate continued eligibility of the Recipient.
- d. If a Recipient fails to timely submit a request for renewal then the Recipient shall cease to be eligible for Supplemental Assistance until and unless a new application is timely made under Section 12 (Application Procedures) of this Ordinance.

- e. If there are any changes to a Recipient's eligibility, as provided in the Recipient's original application for Supplemental Assistance, then the Recipient shall not be eligible for renewal under this Section and must submit a new application pursuant to Section 12 (Application Procedures) if they are requesting Supplemental Assistance.
- f. Supplemental Assistance payments for approved renewals shall be made in the same time and manner as provided for approved applications.

Section 16. Payment Period

- a. Distribution of Supplemental Assistance payments for adult Recipients who applied during the Open Application Period shall be made on an annual basis beginning in January of each year on a date, manner and schedule approved by the Director.
- b. Distribution of Supplemental Assistance payments for minor Recipients shall be made on a quarterly basis pursuant to a schedule approved in advance by the Tribal Council.

Section 17. Life Changing Events and Changes to Eligibility

- a. Payments for Supplemental Assistance may not be modified or terminated by the Recipient or any other person except as expressly provided in this Section or by Tribal action pursuant to this Ordinance.
- b. Tribal members shall have the option of receiving Assistance or modifying the percentage of Assistance in the event of a Life Changing Event to the Applicant or Recipient. Applications for Supplemental Assistance shall be made in a form and schedule approved by the Director and shall be subject to all requirements of this Ordinance.
- c. If a Recipient no longer qualifies for Supplemental Assistance due to a Life Changing Event, then the Recipient must immediately notify the Director and such Assistance shall be terminated and the Recipient shall be eligible to apply for Supplemental Assistance during the next open application period. Failure to immediately notify the Director shall result in termination under Section 21 (Termination) of this Ordinance.

Section 18. Limited Use of Assistance Payments and Substantiation

- a. All Assistance must be used for the purpose provided in an Approved Program. If Assistance is used or pledged for a purpose inconsistent

with the requirements or purpose provided in an Approved Program or this Ordinance then the payment will be deemed forfeited. All forfeited payments shall revert to per capita payments and shall be distributed in accordance the RAP and Section 21 of this Ordinance (Termination).

- b. The Director shall keep books and records necessary to demonstrate compliance with this Ordinance. Recipients are responsible for maintaining their own books and records as may be required for substantiation for compliance with this Ordinance and for federal individual income tax purposes. Recipients shall provide any substantiation requested in writing by the Director or his/her delegate to show compliance with this Ordinance.

Section 19. Programs Not Limited to Means Testing

Approved Programs shall not require a showing of individual need or means testing in order to receive non-taxable treatment under the General Welfare exclusion. The Tribe also reserves the right to provide community-based Programs and programs based on non-financial needs under the General test so that no individual means testing is needed. The Tribe may also approve programs which are financial need based in order to assist those most in need.

Section 20. Annual Budgeting: Unfunded Program

Notwithstanding anything to the contrary, Applicants shall not have an interest in or right to any funds budgeted for or set aside for Approved Programs until paid. Assistance funds shall remain assets of the Tribe until distributed.

Section 21. Termination

- a. Notwithstanding anything herein to the contrary, the Tribe shall terminate Assistance to any Recipient or any Beneficiary receiving Assistance if the Tribe finds that the Recipient has violated or intends to violate the terms of this Ordinance, or the policies and procedures for any Approved Program.
- b. The Tribe shall notify the Recipient, of the termination and shall provide the reason for such termination in writing. Termination of Assistance shall forfeit the Recipient's option to receive Assistance in lieu of per capita payments effective upon the date of termination of Assistance.

- c. Any amounts of Assistance determined by the Director to be received or used in violation of this Ordinance or Approved Program shall be subject to federal income tax.
- d. All terminations shall be effective upon the date of the Director's notice of termination and shall render the Recipient ineligible for Assistance for the remainder of the year of termination and for one additional year immediately following the year of termination.

Section 22. Judicial Review

- a. A final decision of the Director to terminate Assistance or deny an application or a renewal for Assistance under this Ordinance may be appealed to the Saginaw Chippewa Community Tribal Court by filing a Notice of Appeal with the Tribal Court and serving such Notice on the Director and the General Counsel for the Tribe within five (5) calendar days after the filing. All appeals shall be subject to the exclusive jurisdiction of the Saginaw Chippewa Community Tribal Court.
- b. Lawsuits brought under this Section shall be filed not later than thirty (30) calendar days after the date of the Tribe's decision to deny an application for Assistance or to renew Assistance or to suspend or terminate Assistance provided under this Ordinance. Lawsuits under this Subsection must name the Office or Tribal Regulation and Tax as a party. The rules of civil procedure provided in the Saginaw Chippewa Tribal Code shall apply to lawsuits brought under this Section unless otherwise provided by this Ordinance and may not be heard by a jury.
- c. All appeals shall be based on the administrative record of the Tribe, and the court must affirm the decision by the Tribe unless it determines that the Tribe's decision was arbitrary, capricious, an abuse of discretion or was otherwise contrary to law.
- d. The Tribal Community Court's decision shall be made no later than ninety (90) calendar days after the filing of the Notice of Appeal. The Tribal Community Court's decision shall be final and shall not be subject to appeal to any court including the Tribal Appellate Court. Upon receipt of a Tribal Community Court decision reversing the Tribe's decision, the Tribe shall reinstate Assistance payments to the Recipient pursuant to the requirements of this Ordinance and federal law.

Section 23. Waiver of Sovereign Immunity

The Tribe expressly waives its sovereign immunity and consents to suit in Tribal Court for the limited purpose of permitting appeals properly filed and

presented pursuant to this Ordinance and for no other purpose. The Tribe's waiver of sovereign immunity is subject to the limitation that the relief granted in lawsuits seeking judicial review shall not include monetary damages.

Section 24. Fraud

- a. It is a violation of this Ordinance for a person to obtain or assist in obtaining Assistance to which the person is not entitled.
- b. Assistance shall not be granted and shall be terminated if obtained by fraud. The Tribe shall have a cause of action in Tribal Court for any benefits received under this Ordinance by fraudulent means.

Section 25. Anti-alienation

An Applicant's right to apply for or receive Assistance is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the Applicant.

Section 26. Program Policies

- a. Policies for Approved Programs shall be presented to the Tribal Council by the Department responsible for the Assistance Program. The Tribal Council shall have discretion to approve or deny any proposed program or policy presented pursuant to this Ordinance. Policies shall satisfy the requirements of this Ordinance.
- b. Indian General Welfare Benefits (Code Section 139E) Programs that meet the requirements of this Ordinance including, but not limited to, the following criteria for exemption under the General Welfare Exclusion shall be treated as non-taxable Assistance under the General Welfare exclusion without the applicant having to demonstrate individual need:
 - i. The program is administered under specified policies and does not discriminate in favor of the members of the Tribal Council;
 - ii. Program benefits are available to any Tribal member who meets such policy requirements;
 - iii. Program benefits are for the promotion of the general welfare;
 - iv. Program benefits are not lavish or extravagant; and
 - v. Program benefits are not compensation for services.

- vi. The program is approved by formal action of the Tribal Council
- c. Ceremonial Activities: Any items of cultural significance, reimbursement of costs or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as compensation for services.
- d. Safe Harbor programs: Programs that meet the following general criteria for safe harbor treatment, and provide qualifying safe harbor benefits, shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need:
 - i. General Criteria for Safe Harbor Treatment:
 - 1. The benefit is provided under a specific approved program of the Tribe;
 - 2. The program has written policies specifying how individuals may qualify for the benefit;
 - 3. The benefit is available to any Tribal member, identified group of Tribal members, or qualified non-member who satisfy the program policies, subject to budgetary restraints;
 - e. The distribution of benefits from the program does not discriminate in favor of the governing body of the Tribe;
 - f. The benefit is not compensation for goods or services; and
 - g. The benefit is not lavish or extravagant under the facts and circumstances, as determined by the Tribal Council.

Section 27. Specific Safe Harbors

The following benefits may be provided under a Safe Harbor program. The benefits listed in the parenthetical language herein are illustrative only, and not an exhaustive list. A benefit may qualify for exclusion from gross income as a Safe Harbor Program even though the benefit is not expressly described in the parenthetical language herein, provided that it meets all other requirements of the Internal Revenue Service, and Revenue Procedure 2014-35 (as may be amended):

- a. Housing programs. Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that:
 - i. Pay mortgage payments, down payments, lease or rent payments (including but not limited to security deposits) for principal residences;
 - ii. Enhance habitability of housing, such as by remedying water, sewage, or sanitation service, safety issues (including, but not limited to, mold remediation,), or heating or cooling issues;
 - iii. Provide basic housing repairs or rehabilitation (including, but not limited to, roof repair and replacement);
 - iv. Pay utility bills and charges (including, but not limited to, water, electricity, gas, and basic communications services such as phone, internet, and cable);or
 - v. Pay property taxes or make payments in lieu of taxes (PILOTs).
- b. Educational programs. Programs to:
 - i. Provide students (including, but not limited to, post-secondary students) transportation to and from school, tutors, and supplies (including, but not limited to, clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities;
 - ii. Provide tuition payments for students (including, but not limited to, allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education;
 - iii. Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and
 - iv. Provide job counseling and programs for which the primary objective is job placement or training, including, but not limited to, allowances for expenses for interviewing or training away from home (including, but not limited to, travel, auto expenses, lodging, and food); tutoring; and appropriate

clothing for a job interview or training (including, but not limited to, an interview suit or a uniform required during a period of training).

- c. Elder and disabled programs. Programs for individuals who have reached age 55 or are mentally or physically disabled that provide:
 - i. Meals through home-delivered meal programs or at a community center or similar facility;
 - ii. Home care such as assistance with preparing meals or doing chores, or day care outside the home;
 - iii. Local transportation assistance; and
 - iv. Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).
- d. Cultural and religious programs. Programs to:
 - i. Pay expenses (including, but not limited to, admission fees, transportation, food, and lodging) to attend or participate in an Indian tribe's cultural, social, religious, or community activities such as pow-wows, ceremonies, and traditional dances;
 - ii. Pay expenses (including, but not limited to, admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Tribe, including, but not limited to, those on other Indian reservations;
 - iii. Pay the costs of receiving instruction about an Indian tribe's culture, history, and traditions (including, but not limited to, traditional language, music, and dances);
 - iv. Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and
 - v. Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Tribe or another tribe.
- e. Other qualifying assistance programs. Programs to:
 - i. Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation

between an Indian reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores);

- ii. Pay for the cost of transportation, temporary meals, and lodging of a Tribal citizen or Qualified Non-citizen while the individual is receiving medical care away from home;
- iii. Provide assistance to individuals in exigent circumstances (including, but not limited to, victims of abuse), including, but not limited to, the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses;
- iv. Pay costs for temporary relocation and shelter for individuals displaced from their homes (including, but not limited to, situations in which a home is destroyed by a fire or natural disaster);
- v. Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals; and
- vi. Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).

Section 28. Compensation Safe Harbor.

- a. For Safe Harbor Programs, and subject to amendments to Revenue Procedure 2014-35 hereafter, the Tribe will presume that individual need is met for religious leaders or spiritual officials or leaders (including but not limited to Pipe-carriers, Firekeepers, Traditional Healers, the Drum and Singers, Flag-carriers, and other cultural or spiritual and religious officiants.) receiving the following benefits, and that the benefits do not represent Compensation for services: benefits provided under an Indian tribal governmental Program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances, as determined by the Tribal Council, or nominal cash honoraria provided to religious or spiritual officials or leaders (including, but not limited to, Pipe-carriers, Firekeepers, Traditional Healers, the Drum and Singers, Flag-carriers, and other cultural or spiritual and religious officiants.) to recognize their participation in cultural, religious, and social events (including, but not limited to, pow-wows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and subsequent honoring events).

- b. In accordance with 26 U.S. Code § 139E - Indian General Welfare Benefits, "deference shall be given to Indian tribal governments for the programs administered and authorized by the tribe to benefit the general welfare of the tribal community."
- c. Non-Safe Harbor Programs: Nothing in this Statute or the IRS safe harbor guidance shall limit the Tribe's right to provide Assistance outside of the safe harbor rules.
- d. Any changes to the Safe Harbor programs as a result of the Indian General Welfare Exclusion Act of 2014 will be immediately incorporated, by reference, into this Ordinance.

Section 29. Severability

If any section, subsection, paragraph, sentence, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 30. Effective Date

This Ordinance shall be effective on the date established by Tribal Council Resolution.

LEGISLATIVE HISTORY

Enacted by Resolution 24-007 approved on October 4, 2023. Amended by Resolution 24-012 approved on October 18, 2023.
Section 3.r. amended by Resolution 24-040 approved on November 29, 2023.