SILETZ MARRIAGE ORDINANCE

Siletz Tribal Code § 8.400

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§ 8.400   TITLE

This ordinance shall be known as the "Marriage Ordinance of the Confederated Tribes of Siletz Indians."

§ 8.401   PURPOSE AND AUTHORITY

(a)   Pursuant to the Constitution of the Confederated Tribes of Siletz Indians and Section 2.108 (a) of the Siletz Tribal Council Rules of Procedure Ordinance, the Tribal Council has legislative authority to establish Tribal Ordinances. In order to protect, preserve and promote the health and welfare of the Tribe and its members, the Tribal Council has established this Marriage Ordinance, which sets out rules to govern the recognition and formation of marriage and marriage equality.

(b)   The Tribal Council finds that marriage is a fundamental human right, and an institution that strengthens family relationships and preserves the integrity, cohesiveness, and continuity of the Siletz Tribe. The formation and recognition of marriage is thus essential to the Tribe's political integrity, economic security, health and welfare.

(c)   The Tribal Council further finds that the right to equality without discrimination requires that couples of the same sex and couples of opposite sex have equal access to marriage and to the protections, responsibilities, and benefits that result from marriage.

(d)   To reflect our values of respect and equality, it is the policy of the Tribe that the marriages of same sex couples and the marriages of opposite sex couples be treated equally in all respects under Tribal law.

§ 8.402   DEFINITIONS

(a)   **"Address"** means a residence, mailing or contact address in the same state or

reservation as the person's home.

(b)   **"Civil union"** means a civil union authorized and created under the laws of another federally recognized Indian tribe or state.

(c)   **"Domestic Partnership"** means a domestic partnership authorized and recognized under the laws of another federally recognized Indian tribe or state.

(d)   **"Marriage"** means a formal and express civil contract entered into between two persons, who are at least 18 years of age, who are otherwise capable of entering a Marriage, and at least one of whom is a member of the Confederated Tribes of Siletz Indians.

(e)   **"Tribe"** means the Confederated Tribes of Siletz Indians.

(f)   **"Tribal Court"** means the Siletz Tribal Court.

(g)   **"Tribal member"** means a person who is an enrolled member of the Confederated Tribes of Siletz Indians.

(h)   **"Reservation"** means those lands held in trust by the Federal government for the benefit of the Tribe for the purposes of this Ordinance.

(i)   **"Solemnize"** means to mark or celebrate officially or formally with a religious ceremony; to perform the ceremony of (marriage); to hold or perform (ceremonies, rites, etc.) in due manner.

§ 8.403   PARTIES TO A MARRIAGE

In order to be married pursuant to this Ordinance, the parties must meet the following conditions:

(a)   At least one party to the proposed Marriage is a Tribal member at the time that the license is issued and at the time that the Marriage is solemnized;

(b)   Both parties to the Marriage are at least 18 years of age at the time of the Marriage; and,

(c)   The parties to the Marriage are not first cousins or any nearer of kin to each other, whether of the whole or half blood, whether by blood or adoption, computing by the rules of the civil law. However, when the parties are first cousins by adoption only, the Marriage is not

prohibited.

(d)   Marriage is the legally recognized union of two persons. A marriage that is otherwise valid shall be valid.

(e)   No Tribal government treatment or legal status, effect, right, benefit, privilege, protection, or responsibility related to marriage, whether deriving from a statute, resolution, administrative or court rule, regulation, policy, common law, or any other source of law, shall differ based on whether the parties to the marriage are or have been of the same sex or opposite sex.

§ 8.404   MARRIAGE LICENSE; MARRIAGE CERTIFICATE; EQUAL ACCESS

(a)   No person may perform a Marriage under this Ordinance unless the parties have first obtained a Marriage license from the Siletz Tribal Court. Upon receipt of an application, and a fee to be set by the Tribal Court, the Tribal Court shall immediately issue a Marriage license form to any couple that appears to be qualified.

(b)   The Tribal Court may request proof of age and or Tribal membership prior to issuing a license.

(c)   The Marriage license shall be valid for 60 days regardless of whether the final day ends on a legal or Tribal holiday.

(d)   The form of Marriage license shall contain a Marriage certificate for the person solemnizing the Marriage to complete and return to the Tribal Court, and shall include instructions clearly and prominently stating that the parties shall not be married until the Marriage certificate is complete and returned. These instructions will set forth clear instructions regarding how parties may solemnize a Marriage.

(e)   The Tribal Court must keep an official record of Marriage licenses and certificates issued.

(f)   The Tribal Court must use a Marriage license form that requests statistical data regarding both parties' age, place of birth, sex, occupation, residence and previous marital and domestic partnership status. The Tribal Court will develop the license and certificate forms consistent with the requirements of this Ordinance. Any licenses issued by the Tribe shall state: "Neither you nor your spouse is the property of the other. The laws of the Confederated Tribes of

Siletz Indians affirm your right to enter into Marriage and to live within the Marriage free from violence and abuse."

(g)   The license form shall require all applicants for a Marriage to expressly consent to the regulatory jurisdiction of the Confederated Tribes of Siletz Indians to authorize this Marriage and to the adjudicatory jurisdiction of the Siletz Tribal Court for the purpose of any action to obtain a judgment of dissolution or annulment of the Marriage, for legal separation of the spouses or for any other proceeding related to the spouses' rights and obligations, even if one or both partners cease to reside in, or to maintain a domicile of the Siletz Indian Reservation. The license form shall advise all applicants for a Marriage to seek out the advice of an attorney before signing.

(h)   The license form shall require individuals who wish to form a Marriage to:

(1)   State that the individual is at least 18 years of age and is otherwise capable to enter into a Marriage at the time the individual signs the form;

(2)   State whether the individual is a Tribal member;

(3)   Provide a mailing address;

(4)   Sign the form with a declaration under oath that the representations made on the form are true, correct and contain no material omissions of fact to the best knowledge and belief of the individual;

(5)   Have a notary public attest to the individual's statement under oath; and,

(6)   Sign a statement acknowledging the Sovereign Immunity of the Siletz Tribe and its employees, representatives, officers and agents.

(i)   No application for a Marriage license shall be denied on the grounds that the parties are of the same sex.

§ 8.405   WHO MAY SOLEMNIZE MARRIAGE

(a)   A Marriage may be solemnized and performed on the Reservation by the following:

(1)   A person or clergyman recognized by his or her religion as having

authority to marry;

    (2)   The Chief Judge of the Siletz Tribal Court; or

    (3)   Any other person authorized by applicable Law.

(b)   The parties may choose for the Marriage to be solemnized according to the Tribal customs and traditions, provided that the solemnization is consistent with the requirements of this Ordinance.

(c)   No Marriage solemnized by a person professing to have authority to marry will be invalid for lack of authority, if it is both parties' belief that the person had the authority and that the parties have been lawfully married.

(d)   A person solemnizing a Marriage may charge couple being married. Such charge shall be determined by the Tribal Court.

§ 8.406   DUTY OF PERSON SOLEMNIZING MARRIAGE

Any person solemnizing a Marriage must review the Marriage license, and must ascertain:

(a)   The parties' identities;

(b)   That the parties are of sufficient age to marry; and,

(c)   That, at the time of solemnization, the parties' marriage license remains valid under the time requirements in Section 8.404 of this Chapter.

§ 8.407   FORM OF SOLEMNIZING; WITNESSES; PROCEDURE

(a)   In solemnizing a Marriage, no particular practice is required except that the parties will assent or declare in the presence of the person solemnizing and at least two other witnesses that they take each other freely as spouses.

(b)   The person solemnizing the Marriage may administer oaths or question the parties and the witnesses to determine that the parties are qualified to be married under this Chapter.

(c)   The person solemnizing the Marriage must complete the solemnization portion of the Marriage license form and return it to the Tribal Court before the license expiration date.

§ 8.408   **RECOGNITION OF MARRIAGES, DOMESTIC PARTNERSHIPS AND CIVIL UNIONS FROM OTHER JURISDICTIONS**

(a)   For the exclusive purpose of providing Tribal and Tribally-administered benefits, the Tribe shall recognize Marriages, Domestic Partnerships and Civil Unions formed under laws of other federally recognized tribes, U.S. states, (and their duly authorized subdivisions), and those foreign nations, jurisdictions and provinces that the United States Government formally recognizes, provided that:

      (1)   At least one member of the Marriage, Domestic Partnership or Civil Union is a Tribal member at the time that the recognition is requested;

      (2)   Both parties to the Marriage, Domestic Partnership or Civil Union are at least 18 years of age;

      (3)   The parties to the Marriage, Domestic Partnership or Civil Union are not first cousins or any nearer of kin to each other, whether of whole or half blood, whether by blood or adoption, computing by the rules of the civil law. However, when the parties are first cousins by adoption only, this prohibition will not apply;

      (4)   The provision of any Tribally-administered benefit to the parties to the Marriage, Domestic Partnership or Civil Union does not conflict with the requirements of federal law; and

      (5)   The parties to the Marriage, Domestic Partnership or Civil Union provide adequate proof of their Marriage, Domestic Partnership or Civil Union.

(b)   Nothing in this Section (§8.408) creates or authorizes a Marriage, Domestic Partnership or Civil Union under Siletz Tribal law.

(c)   Nothing in this Ordinance limits the authority of the Siletz Tribal Council to categorically prescribe, reduce or eliminate all or a portion of Tribal benefits or privileges, if any, to Spouses or Domestic Partners of Tribal members. Nothing in this Ordinance limits the authority of the Siletz Tribal Council to categorically provide greater benefits to Tribal members than to Spouses and Domestic Partners of Tribal members.

§ 8.409   JURISDICTION

The Tribe has jurisdiction to govern the formation and recognition of a Marriage, Domestic Partnership or Civil Union between its members and between a member and a non-member regardless of the member's place of residence.

§ 8.410   SURNAME MAY BE RETAINED AFTER MARRIAGE

Upon entering into a Marriage, either person may either retain his or her prior surname or adopt his or her spouse's prior surname or a combination of both. The Marriage license form shall accommodate these requirements.

§ 8.411   VOID MARRIAGES

The following marriages are not recognized by the Tribe, are prohibited, and, if solemnized within the Tribe's jurisdiction, are absolutely void:

(a)   When either party has a spouse or domestic partner living at the time of the marriage, or

(b)   When the parties to the marriage are first cousins or any nearer of kin to each other, whether of whole or half blood, whether by blood or adoption, computing by the rules of the civil law. However, when the parties are first cousins by adoption only, the marriage is not prohibited or void.

§ 8.412   VOIDABLE MARRIAGES

When the Tribal Court finds that either party to a marriage is incapable of making a marital contract or consenting to the contract for want of legal age or sufficient understanding, or when the consent of either party was obtained by fraud or force, the marriage is void from the time it is so declared by a judgment of a court having jurisdiction of the marriage. However, a marriage void under this subsection does not relieve a party to the marriage from the spousal support and property settlement requirements of tribal law or other applicable law.

§ 8.413   LEGITIMACY OF CHILDREN

When a Marriage is contracted in good faith and in the belief that it is a valid Marriage, the children of the Marriage born or conceived prior to the Marriage's voiding or the Tribal Court's order invalidating the Marriage for any reason are presumed to be the legitimate issue of both parents, unless determined otherwise.

§ 8.414   RULEMAKING AUTHORITY

The Tribal Court shall have the authority to prescribe such regulations and procedures as it deems necessary to carry out the purpose of this ordinance and to facilitate its operation.

§ 8.415   PROHIBITED ACTS; PENALTY

(a)   No person may perform a Marriage under this ordinance unless authorized to do so under Siletz Tribal law.

(b)   No person may knowingly give false information on an application for a Marriage license.

(c)   Any person who intentionally violates subsections (a) or (b) of this section is punishable as a civil violation pursuant to the Section 12.802 of the Siletz Civil Offense Ordinance, in addition to any other penalty, conviction or punishment under Tribal or other applicable law.

§ 8.416   REPEAL OF INCONSISTENT ORDINANCES

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of any conflict with this Ordinance.

§ 8.417   SEVERABILITY

If any provision of this Ordinance or the application of any provision of this Ordinance to any person or circumstance is held invalid by a court of competent jurisdiction, that provision shall be severed from the Ordinance and the remainder of this Ordinance shall remain in full force and effect.

§ 8.418   NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Ordinance shall be construed as a waiver of sovereign immunity of the Tribe or any Tribal official, agent or employee.

§ 8.419   EFFECTIVE DATE

This chapter shall not become effective until all of the following have been completed:

(a)   The promulgation of regulations to implement those provisions, including form documents for use by the Siletz Tribal Court; and

(b)   The adoption of a Tribal Ordinance to govern the dissolution of marriages formed under this Chapter.