



To: The Tribal Council
From: The Tribal Attorney's Office
Date: August 14, 2025
Re: PRIVILEGED AND CONFIDENTIAL – Draft No Contracts & No Benefits Code

Summary – *The Individuals and Businesses Ineligible for Tribal Benefits and Business Code establishes a centralized system to prevent the Tribe from awarding business to untrustworthy contractors and providing benefits to the Tribe's debtors and bad actors.*

The Tribe has the following two problems:

1. The Tribe often works with contractors who do poor work, yet it has continued to work with some of them. Part of the reason for this is that there is no centralized system to prevent these contractors from receiving more work.
2. The Tribe provides services, financial assistance, and other benefits to its tribal members. These members receive these benefits even when they owe the tribe money or have committed fraud against the Tribe.

The proposed code addresses these issues by allowing the Tribe to prohibit them from receiving tribal business and benefits. The code does the following:

- It creates a no-contract list, a no-preference list, and a no-benefit list. Individuals on the list are limited in the benefits or businesses they can receive.
- The no-preference list prevents an individual from receiving Indian preference for tribal business. This list is an intermediate step between getting and not getting tribal business. This list cannot be used for tribal-employment preference—it is only for contracts.
- The CEO decides whether to place anyone on one of these lists.
- Anyone placed on one of the lists can contest the placement and appeal the CEO's decision.
- It establishes criteria for who can and can't be placed on these lists—the CEO cannot deny a person benefits or a business for any reason.

Please let our office know if you have any questions.

Proposed Ordinance 2025-04: Individuals and Businesses Ineligible for Tribal Benefits and Business

Tribal Council member Toni Minton introduces the following ordinance

An ordinance of the Keweenaw Bay Indian Community that will be enacted under the authority of the Constitution and By-Laws of the Keweenaw Bay Indian Community to add a new chapter to Title 90 of the Tribal Code. This new Chapter outlines the Tribe's ability to prevent individuals from receiving benefits and contracts from the Tribe. This Ordinance will be codified as Title 72.

Title 72 INDIVIDUALS AND BUSINESSES INELIGIBLE FOR TRIBAL BENEFITS AND BUSINESS

Sec. XX-XX. Purpose, Authority, and Interpretation.

The purpose of this Chapter is to ensure the Tribe's financial resources are not provided to individuals who have a history of misconduct or neglect.

All provisions of this Title will be liberally construed to accomplish this purpose. The authority for this Title is in Article VI, Section 1 of the Tribal Constitution.

Sec. XX-XX. Definitions

"Benefit" includes services, financial assistance, or other benefits. But it does not include family emergency services or KBIC Health Department services.

"Tribal Business" includes any business opportunity with the Tribe, contract with the Tribe, or purchase order or other accounts payable from the Tribe. It also consists of any grant or loan from the Tribe. But Tribal Business does not include employment with the Tribe.

"CEO" means the Chief Executive Officer.

Sec. XX-XX. No Benefits List

The CEO may place a person satisfying the criteria under Sec. XX-XX (Benefits Criteria) on a list of persons ineligible for Benefits (No Benefits List). The CEO may render any person on the No Benefits List ineligible for all Benefits or individual Benefits. The denial of Benefit(s) is indefinite, but the CEO may grant a person Benefit(s) again at any time.

Sec. XX-XX. No Contract List

The CEO may place a person satisfying the criteria under Sec. XX-XX (Contract Criteria) on a list of persons ineligible for Tribal Business (No Contract List). The CEO may render any person on the No Contract List ineligible for all Tribal Business or some Tribal Business. The denial of any Tribal Business is indefinite, but the CEO may grant a person Benefit(s) again at any time.

Sec. XX-XX. No Preference List

The CEO may place a person satisfying the criteria under Sec. XX-XX (Contract Criteria) on a list of persons ineligible for tribal preference (No Preference List). No person on the No Preference List may receive Indian preference for Tribal Business with the Tribe. A person is indefinitely on the No Preference List, but the CEO may remove a person from this list at any time.

Sec. XX-XX. Benefits Criteria

A person may be placed on the No Benefits List if any of the following circumstances apply:

- a) If there is an outstanding money judgment against that person in favor of the Tribe from a court of competent jurisdiction, there is a court order requiring that person to pay restitution to the Tribe, or a delinquent account receivable that the person owes to the Tribe;
- b) If the person has been convicted of, or pleaded guilty or no contest to, a criminal offense within the previous ten years under any law for embezzlement, theft, or fraud and the Tribe was the victim.

Sec. XX-XX. Contract Criteria

A person may be placed on the No Contract List or No Preference List if any of the following circumstances apply:

- a) If there is an outstanding money judgment against that person in favor of anyone from a court of competent jurisdiction, there is a court order requiring that person to pay restitution to anyone, or there is a delinquent account receivable that the person owes anyone;
- b) If, under any transaction, contract, or legal relationship with anyone, there has been any failure to meet a material contractual or financial obligation or failure to comply with applicable laws;
- c) If the person has been convicted of, or pleaded guilty to, a criminal offense within the previous ten years under any tribal, state, or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, a criminal offense related to obtaining a contract or in the performance of such contract, or other crime of moral turpitude.

Sec. XX-XX. Process

The CEO will provide the person with 30 days' written notice that they will be placed on one of the lists. The CEO's notice must state the basis for placing the person on a list or lists. The person may contest their placement by filing a statement with the Tribal Council before the 30-day written notice expires. The statement must say why they believe they have not met the relevant criteria. The CEO's Office may respond to the written statement within 30 days of its filing. Upon receipt of the written statement and after the CEO has had an opportunity to respond, the Tribal Council will reject the CEO's decision if it finds that the CEO based its decision on clearly erroneous facts or an unreasonable interpretation of the criteria. The Tribal Council's decision is final.

Sec. XX-XX. Business Licensing Presumption

Everyone must presume that a person on the No Contract List cannot meet conditions that sufficiently protect the people's health, safety, and welfare. These conditions are necessary to receive a Business License under Sec. XX-XX. The person may overcome this presumption with clear and convincing evidence.

Sec. XX-XX Right to Amend.

The Tribe reserves the right to amend or repeal this Title in any manner, including prohibiting or limiting the type or number of Business Licenses available.

Sec. XX-XX Severability.

If any one or more sections, provisions, phrases, or words of this Title shall be found invalid by a court of competent jurisdiction, such holding shall not affect the validity or the enforceability of the remaining sections, provisions, phrases, or words of this Title.