The Klamath Tribes
Tribal Council

Resolution #2008-32

APPROVING KLAMATH TRIBES
LANDLORD-TENANT ORDINANCE

WHEREAS, The Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians signed the Treaty of 1864 establishing the Klamath Reservation; and

WHEREAS, The General Council of the Klamath membership is the governing body of the Tribes, by the authority of the Constitution of the Klamath Tribes (Article VI & VII section IV E) as approved by the General Council and most recently amended on November 25, 2000; and

WHEREAS, The Klamath Indian Tribes Restoration Act of August 27, 1986 (P.L. 99-398) restored to Federal recognition of the Sovereign Government of the Klamath Tribes; and

WHEREAS, The Klamath Tribes’ Tribal Council is the elected governmental body of the Klamath Tribes and has been delegated the authority to direct the day-to-day business and governmental affairs of the Klamath Tribes under the general guidance of the General Council (Constitution, Article VII, section I; Tribal Council by-laws, Article I); and

WHEREAS, the Klamath Tribes have established a Tribal housing program, which oversees, manages, and operates a number of rental units under the jurisdiction of the Tribes; and

WHEREAS, the Tribal Council has determined that it is appropriate and necessary to establish a Landlord-Tenant Ordinance to govern evictions in Tribal Court involving Tribal housing; and

WHEREAS, the Tribal Council has reviewed and considered the draft Klamath Tribes Landlord-Tenant Ordinance, attached hereto as Exhibit A, and has determined that this draft Ordinance is appropriate and necessary;
NOW, THEREFORE BE IT RESOLVED, the Klamath Tribal Council hereby approves the Klamath Tribes Landlord-Tenant Ordinance, attached hereto as Exhibit A, subject to the ultimate review and adoption by the Klamath Tribes' General Council.

CERTIFICATION

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes do hereby certify that at a "Regular" Tribal Council meeting held on the ______ day of ______, 2008 where a quorum was present, the Tribal Council duly adopted this Resolution by a vote of ______ for, ______ opposed, and ______ abstention/s.

Joseph S. Kirk, Chairman
The Klamath Tribes

Torina Case, Secretary
The Klamath Tribes

TCR #2008-32
GENERAL COUNCIL RESOLUTION 2008-002

GENERAL COUNCIL RESOLUTION APPROVING LANDLORD-TENANT ORDINANCE

Whereas, The Klamath Tribes constitute a sovereign nation based on the inherent sovereignty of the Klamath, Modoc and Yahooskin Band of Snake Indians;

Whereas, The sovereignty of the Klamath Tribes was recognized and affirmed by the Treaty of 1864; and

Whereas, The sovereignty of the Klamath Tribes was once again recognized and affirmed by the Klamath Indian Tribes Restoration Act of August 27, 1986 (P.L. 99-398); and

Whereas, The General Council of the Klamath Tribal membership is the governing body of the Tribes, by the authority of the Constitution of the Klamath Tribes (Article VI, & VII, Section IV E) as approved and/or adopted by the General Council amended on November 25, 2000; and

Whereas, Article III, Membership, Enrollment and Voting of the Constitution of the Klamath Tribes recognizes the voting authority of the General Council members who have attained the age of 18 years; and

Whereas, The Klamath Tribes have developed a housing program that offers low-rent housing to low-income Tribal members and other Indians, along with other housing services; and

Whereas, The Klamath Tribes have established a Tribal Court that has jurisdiction over Landlord-Tenant disputes, which would include disputes involving the Klamath Tribes as a landlord; and

Whereas, There is a need to develop procedures and standards for the Tribal Court to apply in such disputes; and
Whereas, The Tribal Council, working with legal counsel for the Tribes, has recommended the enactment of a Landlord-Tenant Ordinance, attached as Exhibit A to this Resolution, to establish such procedures and standards; and

Whereas, The Klamath General Council has reviewed the recommended Landlord-Tenant Ordinance and has determined that it is in the best interest of the Klamath Tribes to approve the Landlord-Tenant Ordinance attached as Exhibit A as recommended;

Now therefore be it resolved, That the Klamath General Council hereby approves and enacts the Landlord-Tenant Ordinance attached as Exhibit A as recommended and presented.

Certification

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that at a Regular General Council meeting held on the 15th day of November, 2008 with a quorum present, the General Council took action and duly adopted this Resolution by a vote of 33 for, 4 opposed, and 5 abstentions. Quorum:Spe

Joe Kirk
Chairman
The Klamath Tribes

Torma Case
Secretary
The Klamath Tribes
# LANDLORD-TENANT ORDINANCE

**KLAMATH TRIBAL CODE**

Title 11 Chapter 68

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Date adopted: 11/15/08

Most Recent Amendment: ____
68.01 Authority and Purpose. This Landlord-Tenant Ordinance is adopted pursuant to the authority vested in the Klamath Tribes' General Council by virtue of its inherent authority as a sovereign Indian tribal government and pursuant to the authority set out in Article V of the Klamath Tribes' Constitution. The purposes of this Ordinance are to establish the jurisdiction of the Klamath Tribes' Tribal Court to hear residential eviction actions on all lands within the jurisdiction of the Klamath Tribes and to issue writs of restitution, and to establish the standards and procedures to govern such eviction actions. This Ordinance upon adoption shall become part of the Klamath Tribes' Tribal Code.

68.02 Definitions. The following words shall have the following meanings under this Ordinance.

(a) "Building or Housing Codes" means any laws, ordinances or governmental regulations of the Tribes which deal with fitness for habitation, health conditions or the safety, construction, maintenance, operation, occupancy, use or appearance of any Dwelling Unit or Premises, or any applicable law or regulation of the Federal Government.

(b) "Dwelling Unit" means a house or building or portion thereof which is rented or leased as a home or residence by any person. With respect to tenancies involving the rental of space for a residential structure, but not the rental of the residential structure itself, "Dwelling Unit" does not include the residential structure.

(c) "General Council" means the Klamath Tribes' General Council.

(d) "Guest" means any person, other than the Tenant, in or around a Dwelling Unit or on the Premises with the permission and consent of the Tenant.

(e) "Homebuyer" means a person(s) who has executed a lease-purchase or purchase agreement for a home, but who has not yet achieved homeownership.

(f) "Indian Country", the "territorial jurisdiction" or the "jurisdiction" of the Tribes means all lands within the Reservation of, owned by, held in trust for, leased, occupied or otherwise controlled by the Tribes, as well as any such ownership or use by an entity of the Tribes. Those terms shall include any and all areas which may constitute the "Indian Country" of the Tribes under applicable provisions of its laws or the laws of the United States.
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(g) "Landlord" means the Tribe, the KTHD, a person, entity, or the Federal Government, which is the owner, lessor or sublessor of a Dwelling Unit, or Premises, intended for the use of Tenants.

(h) "Lease or Rental Agreement" means an agreement, written or oral, as well as valid rules and regulations, regarding the terms and conditions of the use and occupancy of real property, dwelling units, buildings or premises, including a lease-to-purchase agreement and any homeownership agreement.

(i) "Lessee" means a Tenant of a Dwelling Unit or Premises, user and/or occupier of real property, owner, or a homebuyer under any mortgage program. The "Lessee" may, for purposes of federal home mortgage programs, be the Tribes or the KTHD.

(j) "Lessor" means the legal, beneficial or equitable owner of property under a Lease. Lessor may also include those persons who under this Ordinance qualify as the heir(s), successor(s), executor(s), administrator(s) or assign(s) of the Lessor.

(k) "Klamath Reservation" means the Klamath Reservation as that term is defined in Section 11.02(k) of the Tribal Court Ordinance of the Klamath Tribes, and shall include and incorporate any changes or amendments to that definition.

(l) "Klamath Tribes" or "Tribes" means the Klamath Indian Tribe of Oregon, a federally recognized Indian tribe.

(m) "KTHD" means the Klamath Tribes Housing Department.

(n) "Member" means a member of the Klamath Tribes.

(o) "Notice of Termination" means any notice from a Landlord to a Tenant terminating a Lease or Rental Agreement and demanding that the Tenant and those occupying the Premises along with Tenant or with Tenant’s permission vacate and surrender possession of the Premises.

(p) "Nuisance" means the maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably threatens the health or safety of the public, or neighboring property users to enjoy the reasonable use and occupancy of their property.
(q) "Owner" means any person or entity jointly or individually having legal title to all or part of land or a residential structure, including the legal right to own, manage, use or control a residential structure under a mortgage, long-term lease or other security arrangement.

(r) "Ordinance" means this Landlord-Tenant Ordinance.

(s) "Person" means an individual natural person, trust, firm, association, partnership, limited liability company, public or private corporation, political subdivision, government agency, municipality, industry, and any entity whatsoever, and includes the Tribes, and the KTHD.

(t) "Premises" means a Dwelling Unit and the structure of which it is a part and all facilities and areas connected with it, including grounds, common areas and facilities intended for the use of Tenants or the use of which is promised for Tenants. With respect to tenancies involving the rental of space for a residential structure, but not the rental of the residential structure itself, "Premises" is the space rented for a residential structure and all facilities and areas connected with it, including grounds, common areas and facilities intended for the use of Tenants or the use of which is promised for Tenants, but not the residential structure itself.

(u) "Rent" means all periodic payments to be made to a Landlord or Lessor under a Lease or Rental Agreement.

(v) "Residential Eviction Complaint" or "Complaint" means a residential eviction complaint filed in Tribal Court pursuant to this Ordinance seeking a writ of restitution and order of eviction regarding a Tenant(s) residing in certain identified Premises covered by this Ordinance.

(w) "Secretary" means the Secretary of the United States Department of Housing and Urban Development.

(x) "Tenant" means the lessee(s), sublessee(s) or person(s) entitled under a Lease or Rental Agreement to occupy a Dwelling Unit or Premises to the exclusion of others, and includes the members of the household residing with the Tenant under the terms of the Lease or Rental Agreement. "Tenant" also includes a person (along with their household) who rents a space for a residential structure.
(y) "Tribal Council" means the Klamath Tribes' Tribal Council.

(z) "Tribal Court" means the Tribal Court of the Klamath Tribes.

(aa) "Writ of Restitution" means an order and judgment of the Tribal Court ordering the eviction of a Person or Persons from certain identified Premises and authorizing law enforcement officers to forcibly remove such Person or Persons from the Premises if they do not voluntarily comply with the Writ.

68.03 Applicability.

(a) This Ordinance shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of parties, in renting, leasing, occupying or using any and all housing, dwellings, premises or accommodations for human occupation and residence.

(b) The following arrangements are not governed by this Ordinance:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar service;

(2) Occupancy in a hotel, motel or other commercial lodging; or

(c) Lease, rental, or purchase of commercial space.

68.04 Tribal Court Jurisdiction. To ensure the peace, harmony, safety, health and general welfare of Tribal members and those permitted to enter or reside on Tribal lands, and the efficient resolution of disputes, the Tribal Court shall have jurisdiction over any matter involving the subject matter of this ordinance that takes place on the Klamath Reservation or on any lands owned by, held in trust for, leased or used by the Tribes, its members, the KTHD, or any other entity of the Tribes.

68.05 Leases/ Rental Agreements.

(a) Effect of Leases/ Rental Agreements. The provisions of this Ordinance, as well as any applicable laws as identified herein, establish the minimum rights and responsibilities of landlords and tenants. Leases or Rental Agreements may supplement these minimum rights and responsibilities,
so long as such supplemental conditions are not inconsistent with the requirements of this Ordinance.

(b) **Term of Tenancy.** In the absence of a definite term in the Lease or Rental Agreement, the tenancy shall be month-to-month.

(c) **Payment of Rent.** In the absence of definite terms in the Lease or Rental Agreement, Rent is payable at the Landlord's office or other location designated by the Landlord. In the absence of definite terms, the amount of Rent shall be the fair market value of the rental unit, except where otherwise restricted by applicable law or regulation.

68.06 **Policies, Rules and Regulations.**

(a) The Landlord may develop, promulgate, implement, and enforce reasonable policies and rules and regulations regarding the use and occupancy of the Premises.

(b) Such policies, rules and regulations are enforceable against the Tenant only if:

1. Their purpose is to promote the convenience, safety or welfare of the Tenants in the Premises, preserve the Landlord's property from abusive use or make a fair distribution of services and facilities held out for all the Tenants generally;

2. The policies, rules and regulations are reasonably related to the purpose for which they are adopted;

3. The policies, rules and regulations apply to all Tenants in the Premises in a fair manner; and,

4. The policies, rules and regulations are sufficiently explicit in their prohibition, direction or limitation of the Tenant's conduct to fairly inform him/her of what he/she shall or shall not do to comply.

(c) Such policies, rules and regulations may be changed from time to time by a Landlord, provided that written notice of such change is provided to the Tenants.
68.07 **Landlord Responsibilities.** Except as otherwise provided in a Lease or Rental Agreement, each Landlord subject to the provisions of this Ordinance shall:

(a) Maintain the Dwelling Unit in a decent, safe and sanitary condition.

(b) Comply with applicable Building and Housing Codes.

(c) Make all necessary repairs to put and maintain the Dwelling Unit in a fit and habitable condition, except where the Dwelling Unit is damaged or otherwise rendered unfit or uninhabitable by the actions or omissions of tenant, members of tenant’s household, tenant’s guests, or other persons under Tenant’s control, in which case such duty shall be the responsibility of the Tenant, or where the Lease/Rental Agreement shifts responsibilities for maintenance to the Tenant.

(d) Ensure Tenant access to the Premises.

(e) Maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, where such things are not the responsibility of the Tenant or have not been installed by the Tenant or someone within his/her control.

(f) Provide running water, hot water and heat in accordance with applicable Building and Housing Codes, except to the extent the Tenant is required to provide such for himself/herself under the terms of any Lease or Rental Agreement;

(g) Protect the right of quiet enjoyment of the Dwelling Unit to the Tenant and enforce policies regarding conduct of tenants, their guests, and other persons on the premises aimed at preventing nuisance, endangerment of public health and safety, breach of peace, or interference with the quiet enjoyment tenants.

(h) Give sole possession of the Dwelling Unit to the Tenant in accordance with the Lease or Rental Agreement.

68.08 **Tenant Responsibilities.** Except as otherwise provided in a Lease or Rental Agreement, each Tenant subject to the provisions of this Ordinance shall:
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(a) Pay rent without demand or notice at the time and place agreed upon by the parties. Tenant may not withhold rent for any reason, including but not limited to an assertion by Tenant that Landlord has not met Landlord’s responsibilities for maintenance or upkeep. Any withholding of rent by Tenant shall be deemed a violation of the Lease or Rental Agreement, and grounds for termination and eviction.

(b) Immediately notify the Landlord of any defects in the Premises hazardous to life, health or safety, or of any maintenance or upkeep repairs that need to be made.

(c) Keep the Premises clean and sanitary, and dispose of all ashes, garbage, rubbish, junk and abandoned vehicles in a proper, sanitary and safe manner.

(d) Use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances which are part of the Dwelling Unit or Premises, and the property of the Landlord, in a proper, safe, sanitary and reasonable manner.

(e) Refrain from destroying, defacing, damaging or removing any part of the Dwelling Unit, Premises or common areas, and to require guests to act in like manner.

(f) Pay reasonable charges for the repair of damages, other than normal wear and tear, to the Dwelling Unit, Premises or common areas caused by the Tenant or his/her guests, or to repair such damages as required under the Lease or Rental Agreement, within thirty (30) calendar days of such damage.

(g) Conduct himself/herself, and require members of the household, guests, and other persons under his or her control, to conduct themselves, whether on or off the Premises, in a manner:

(1) Which does not disturb the quiet enjoyment of others or cause a breach of the peace; and

(2) Which is not criminal activity, including drug-related criminal activity.

Date adopted: 11/15/08
Most Recent Amendment:
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(h) Use the Premises only for residential purposes as agreed, and not to use the Premises or permit its use for any other purpose, including illegal conduct or any other activity which may harm the physical or social environment of the Premises or the area around it.

(i) Abide by and comply with all policies, rules and regulations promulgated by the Landlord, including, but not limited to, policy provisions that prohibit any use or possession of alcohol and/or drugs, that prohibit subleases except where expressly authorized by the Landlord, and that prohibit registered sex offenders to reside in the Premises.

(j) Abide by all provisions of the Lease or Rental Agreement.

(k) Provide the Landlord access to the Dwelling Unit or any portion of the Premises under the Tenant's exclusive control to perform maintenance and repairs, inspect the Premises, supply necessary or agreed services or show the Dwelling Unit to prospective buyers or Tenants, provided that such access shall be at reasonable times and upon at least 24 hours written or oral notice from the Landlord, except when serving notices required or permitted under this Ordinance or in emergency situations where the health, safety or welfare of the Tenant or the Tenant's neighbors is in immediate danger or where the Tenant consents. No Tenant who unreasonably denies access to a Landlord for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

(l) Not to make any additions or structural changes to the Premises or the Dwelling Unit without Landlord's written permission.

68.09 Abandoned Dwelling Units.

(a) A Landlord may regain possession of a dwelling unit, in accordance with this section, where the Tenant has vacated the unit without notice to the Landlord and does not intend to return, which is evidenced by the presence of any two or more of the following situations being present:

(1) Nonpayment of rent for two or more months, or shorter periods provided in this Ordinance;

(2) Removal by the Tenant or his agent of his or her possessions and personal effects from the premises;
(3) Terminated water or electrical utility, service for more than one month;

(4) An express statement by the Tenant that he does not intend to occupy the premises after a specified date;

(5) Incarceration of Tenant for a period of more than one month, if there are no other members of Tenant's household and if Tenant has not sought and obtained permission from the Landlord to sublease the Dwelling Unit during that period of time; or

(6) Occurrence of an emergency situation at the Premises that could have been avoided by presence of Tenant, including but not limited to water-, fire-, or weather-related damage.

(b) The Landlord shall send notice to the Tenant at his last known address by certified mail, return receipt requested, stating that:

(1) He has reason to believe that the Tenant has abandoned the dwelling unit,

(2) He intends to reenter and take possession of the Dwelling Unit unless the Tenant contacts him within ten (10) days of receipt of the notice,

(3) If the Tenant does not contact him, he intends to remove any possessions and personal effects remaining in the Premises and to rent the Premises, and

(4) If the Tenant does not reclaim such possessions and personal effects within thirty (30) days after the notice, the Landlord may dispose of such items at Landlord's discretion without any liability to Tenant, provided, however, that if the abandoned property reasonably appears to be of cultural, religious, or ceremonial significance, Landlord shall return such property to the Tribes for disposition.

(5) The notice shall be in clear and simple language and shall include a telephone number and a mailing address at which the Landlord can be contacted.
(c) If the notice described in subsection (b) above is returned as undeliverable, or if the Tenant fails to contact the Landlord within ten (10) days of the receipt of said notice, the Landlord may reenter and take possession of the Dwelling Unit, at which time any Lease or Rental Agreement in effect shall terminate. The Landlord shall dispose of any personal property remaining on the Premises consistent with the procedures set out in Section 68.12(n) of this Ordinance.

(d) Notwithstanding any other provision of this Code, Landlord may enter the premises immediately if there is an emergency situation in which Landlord determines it is necessary to prevent damage or harm to the Premises or to any neighboring persons or premises.

(e) The Landlord need not comply with the procedures set forth in Sections 68.10 through 68.13 of this Ordinance to obtain possession of a dwelling unit if that dwelling unit has been abandoned.

68.10 Unlawful Detainer. A Tenant or other occupant of a Dwelling Unit is guilty of unlawful detainer and may be evicted for any of the following reasons:

(a) Failure to pay the full amount of rent due under a Lease or Rental Agreement when such payments are not made within seven (7) calendar days of the Lease or Rental Agreement date of payment or seven (7) calendar days following the first day of the month in a month-to-month tenancy. The receipt and/or acceptance by a Landlord of partial payments of rent shall not constitute a waiver of the right to seek eviction for failure to pay rent, and partial payment of rent without an express agreement to waive the remaining amount shall constitute unlawful detainer.

(b) Failure to pay any arrearage in Rent, costs or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a Landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.

(c) Any conduct by Tenant, members of Tenant’s household, Tenant’s guests, or other persons under Tenant’s control, whether on or off the Premises, that:

(1) Is criminal activity, including but not limited to drug-related criminal activity and gang-related criminal activity (provided that
such criminal activity need not be proved by a criminal conviction, but may be established by any proof satisfying the preponderance of evidence standard); or

(2) Threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the owner or manager of the housing, guests of any resident, or any member of the general public;

(3) Threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons in the immediate vicinity of the premises;

(4) Is or results in nuisance, property damage or destruction, injuries to the property, person or peace of other residents, guests, or members of the general public, or injuries or damage to common areas and property;

(5) Involves the use or possession of alcoholic beverages on the Premises; or

(6) Involves the presence on the Premises (whether as a member of the household or as a guest) of a registered sex offender.

(d) Serious or repeated violations of a Lease or Rental Agreement, any rules or regulations adopted by the Landlord, or any applicable Building or Housing Codes, including, but not limited to, unauthorized sublease of a Premises.

(e) Occupation of any Premises without permission or agreement of the owner, following any reasonable demand by a person in authority over the Premises to leave.

(f) After the expiration of the term of the Lease or Rental Agreement.

(g) Where the Landlord is the Tribes, KTHD, an Indian Housing Authority, a Tribal Designated Housing Entity, the Secretary, or a Public Housing Authority, when such Landlord has terminated such person’s Lease or Rental Agreement according to procedures adopted by such Landlord.
(h) Where the Landlord is the Tribes and/or KTHD, if the Tenant violates any provisions of the Tribes' Housing policies, including but not limited to unauthorized sublease of the Premises.

(i) Under other terms in a Lease or Rental Agreement which do not conflict with the provisions of this Ordinance.

68.11 Notice of Termination; Notice to Vacate – Requirements and Service

(a) Where a Lease or Rental Agreement, or the rules, regulations, or policies of a Landlord provide for a Tenant to be served with a written Notice of Termination, a Notice to Quit, and/or a Notice to Vacate prior to eviction, and the Landlord has complied with such notice requirements, no additional notice will need to be served on the Tenant prior to Landlord filing a suit for eviction in Tribal Court. Provided, however, that notwithstanding any language in a Lease or Rental Agreement to the contrary:

(1) Where the Landlord seeks to terminate a Lease or Rental Agreement for any activity described in Section 68.10(c) of this Ordinance, the Landlord need only provide a minimum of three (3) calendar days notice; and

(2) In situations in which there is an emergency, such as fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.

(b) Where a Lease or Rental Agreement, and/or the Landlord's rules, regulations, or policies, do not contain any provision for a Tenant to be served with a written Notice of Termination, a Notice to Quit, and/or a Notice to Vacate, or where a person is occupying property without a Lease or Rental Agreement or otherwise without the permission of the owner, the Landlord or Owner must first provide a Notice to Vacate according to the following procedures prior to filing a suit for eviction in Tribal Court:

(1) Contents of Notice. The Notice to Vacate shall be in writing and shall be addressed to the adult Tenants or occupants of the Premises and shall state the legally cognizable reason(s) for requiring them to vacate and the date by which the Tenants or
occupants are required to vacate and quit possession of the Premises.

(2) **Time Requirement for Notice.** The Notice to Vacate must be delivered within the following periods of time:

(A) No less than seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay Rent or other payments required by the agreement.

(B) No less than three (3) calendar days prior to the date to vacate specified in the notice for nuisance, serious injury to property, injury to persons, criminal activity (including drug-related criminal activity), or any other activity described in Section 68.10(c) of this Ordinance, or for occupancy of Premises without the permission of the owner.

(C) In situations in which there is an emergency, such as fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.

(D) No less than fourteen (14) calendar days in all other situations.

(3) **Serving the Notice.** Any Notice to Vacate must be in writing and must be delivered to the Tenant or other occupant in the following manner:

(A) Delivery must be made by an adult person.

(B) Delivery will be effective when it is (i) personally delivered to a Tenant with a copy delivered by mail, (ii) personally delivered to an adult living in the Premises with a copy delivered by mail, or (iii) personally delivered to an adult agent or employee of the Tenant with a copy delivered by mail.
(C) If the Notice to Vacate cannot be given by means of personal delivery, or if the Tenant cannot be found, the Notice may be delivered by means of: (i) certified mail, return receipt requested, at the last known address of the Tenant, or (ii) securely taping a copy of the notice to the main entry door of the Premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the Premises, including a Tribal office, public store or other commonly frequented place, and by sending a copy first-class mail, postage prepaid, addressed to the Tenant at the Premises.

(D) The person giving notice must keep a copy of the Notice and proof of service (certified by affidavit or other manner recognized by law).

68.12 Judicial Eviction Procedures.

(a) Provisions of Ordinance Supersede Other Law. Notwithstanding any other provision of the Klamath Tribal Code, the Rules of the Klamath Tribal Court, or any other provision of applicable law, the following procedures and evidentiary standards shall apply in any action to evict a person(s) for unlawful detainer under this Ordinance.

(b) Commencement of an Action for Eviction. If after the date set forth in any required Notice of Termination or Notice to Vacate the Tenant or other person occupying the Premises has not vacated and quit possession, the Landlord or Owner may commence an action for eviction by filing a Residential Eviction Complaint (hereinafter referred to as “Complaint”) with the Tribal Court and serving the Complaint and Summons on the Tenant or other occupant of the Premises.

(c) Form of Complaint. The Complaint must be signed, but need not be verified, by the Landlord, owner, or an agent or attorney thereof, and shall state:

(1) The names of the adult Tenant(s) or other occupants against whom the suit is brought;

(2) A description or copy of the Lease or Rental Agreement, if any;
(3) The address or reasonable description of the location of the Premises;

(4) The grounds for eviction;

(5) A statement showing that any required notices have been served in accordance with this Ordinance, other applicable law, rules, regulations, or policies of the Landlord, or the Lease or Rental Agreement; and

(6) A statement of the relief demanded, including any claim(s) for possession of the Premises, damages, fees, costs, or other special relief.

(d) Setting Expeditious Trial Date. Notwithstanding any other provision of law, upon filing of the Complaint the Court shall set an expeditious trial date, which shall not be more than thirty (30) calendar days from the date of filing the Complaint. The Court may grant an extension based on the consent of both parties to the suit, but in any case involving the Secretary the case must be heard and judgment issued no more than 60 days from the filing of the Complaint.

(e) Summons. Upon the filing of the Complaint the Clerk of the Tribal Court shall issue a Summons. If there is no Clerk of the Court, or if the Clerk is not available, the Summons shall be issued by the Court Administrator.

(1) The Summons shall direct the defendant(s) to appear in Tribal Court on the date specified in the Summons.

(2) The Summons shall warn the defendant(s) that judgment may be taken against them if they fail to appear or answer.

(f) Service of Summons and Complaint. Service of the Summons and Complaint upon the Defendant shall be the responsibility of the filing party, and shall be served as soon as practical after the Complaint is filed, but in no event may the Summons and Complaint be served less than 20 days prior to the date scheduled for trial. Service shall be made in the following manner:

(1) Service must be made by an adult person who is not a party to the action. If the Tribes or the KTHD is the filing party, the Summons
and Complaint may be served by a law enforcement officer of any jurisdiction, or by an employee of the Tribes or the KTHD.

(2) Service will be effective when the Summons and Complaint are:

(A) Personally delivered to Defendant(s) with a copy delivered by mail;

(B) Personally delivered to an adult living in the Premises with a copy delivered by mail; or

(C) Personally delivered to an adult agent or employee of the Defendant(s) with a copy delivered by mail.

(3) If the Summons and Complaint cannot be served by means of personal delivery, or if the Defendant cannot be found, the Summons and Complaint may be served by either of the following means:

(A) Mailed via U.S. Mail, certified, return receipt requested, to the last known address of the Defendant; or

(B) Securely taping a copy of the Summons and Complaint to the main entry door of the Premises in such a manner that it is not likely to blow away, and by sending a copy first-class mail, postage prepaid, addressed to the Defendant at the Premises.

(4) The person serving the Summons and Complaint shall prepare a proof of service (certified by affidavit or other manner recognized by law) and submit that document to the Court.

(g) Answer. A Defendant served with a Complaint and Summons shall have the right to file an Answer denying the allegations contained in the Complaint and/or setting forth any factual disputes or defenses. Any Answer filed pursuant to this section must be served on the opposing party no later than five (5) days prior to the scheduled trial date.

(h) Rent During Pendency of Case. The Court may in its discretion on motion from the Landlord order the Tenant to pay into the Court Rents for the use and occupancy during the pendency of the eviction case.

Date adopted: 11/15/08
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(i) **Discovery and Prehearing Proceedings.** Discovery shall be informal and reasonably provided on demand of a party. The Court may enter reasonable orders requiring discovery.

(j) **Evidence.** The Court may consider any oral or documentary evidence presented which is relevant to the facts and issues raised by the Complaint without regard to their admissibility under the rules of evidence that apply to other court proceedings, however, the Court may give less weight to evidence that is hearsay or otherwise inadmissible under the rules of evidence.

(k) **Burden of Proof.** The burden of proof in all proceedings under this Section shall be preponderance of the evidence.

(l) **Power of the Tribal Court.**

(1) If Defendant fails to appear at the scheduled trial and has failed to answer the complaint, the Tribal Court shall enter a writ of restitution ordering immediate eviction of a Tenant and delivery of the Premises to the Landlord.

(2) The Tribal Court shall enter a writ of restitution ordering immediate eviction of a Tenant and delivery of the Premises to the Landlord no more than five (5) calendar days after the date of the trial if the Court finds, based on a preponderance of the evidence:

(A) That notice, if required, was provided to the Defendant(s); and

(B) That Defendant(s) is guilty of an act of unlawful detainer as set out in Section 68.10 of this Ordinance.

(3) **Form of Writ of Restitution and of Judgment.** The writ of restitution and the judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. The judgment may state brief reasons for it. If a trial is held, the judge should, whenever possible, render his/her decision immediately after both parties have rested their case and award costs and restitution as appropriate.

Date adopted: 11/15/08

Most Recent Amendment: __________
(4) In addition to issuing a writ of restitution, the Tribal Court shall also have the authority to issue judgment against the Defendants for any or all of the following, as appropriate under the facts of the case:

(A) Back rent;
(B) Unpaid utilities charges;
(C) Damages caused beyond reasonable wear and tear;
(D) Court costs and attorney fees.

(5) Negotiated Settlement. Where Judicial Eviction Procedures have been initiated, the parties may jointly request a stay of such proceedings if both parties mutually agree in good faith and in writing to proceed with settlement discussions. Upon such request, the Court will stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached. The Tribal Court shall have the authority to approve a settlement agreement between the parties if the Tribal Court determines that the settlement agreement is not in violation of law or manifestly unfair.

(m) Execution of Writ of Restitution and Judgment. Any writ of restitution and any judgment may be immediately executed, and the judgments and orders of the Court may be enforced by any law enforcement officer, or any officer of the Court or employee of the Tribes or KTHD expressly authorized by the Court for such purpose. To execute the order, the officer or employee shall:

(1) Remove all the evicted persons from the dwelling and verbally order them not to re-enter;
(2) Provide a copy of the order of eviction to all adult tenants;
(3) Post copies of the order of eviction on the doors of the premises if there is not any adult tenant present at the time of execution; and
(4) Supervise the removal of the possessions of the evicted persons.
(n) Following forcible eviction of the Defendant and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to dispose of the property at the owner's discretion with no liability to the former occupants. The Landlord shall not condition return of the former occupant's personal property on the payment of any costs or fees other than those of removal and storage of those personal possessions. If the abandoned property reasonably appears to be of cultural, religious, or ceremonial significance, the Landlord shall return the items to the Tribe for disposition.

(o) **Appeals.** Appeals under this Code shall be handled according to the general Tribal Court appellate provisions, with the exception that the party taking the appeal shall have only five (5) days from the entry of the order of judgment to file an appeal. All orders from the Court, including any writ of restitution, will remain in effect during the pendency of an appeal under this Code unless otherwise ordered by the Court.

### 68.13 Emergency Interim Eviction

(a) For public safety reasons, whenever a Landlord has reason to believe a resident is engaged in any activity that is an imminent threat to the health or safety of other Tenants or the public, the Landlord may demand that the Tenant vacate the Premises by notice hand delivered (or if hand delivery cannot be effected, then by securely taping a copy of the notice to the main entry door of the Premises). The Landlord may also file at the same time a Complaint with the Court requesting an emergency interim eviction order.

(b) Any Complaint requesting an emergency eviction order shall be served in the same manner as a demand to vacate, and may be served concurrently therewith. The Complaint shall be in the form set forth in Section 68.12(c) of this Ordinance and the copy delivered to the Tenant shall be accompanied by a Notice of Hearing which shall be on a form prescribed by the Tribal Court and identify the time and place for a preliminary hearing on the Complaint. The preliminary hearing must be held within two (2) calendar days, excluding weekends and holidays, of filing of such
Complaint. The Landlord shall obtain the information requested for the notice from the Court at the time the Complaint is filed.

(c) The Court shall issue an emergency interim eviction order if by a preponderance of the evidence it finds that the Tenant's acts or behavior threaten the health or safety of other Tenants or the public. In the order evicting the Tenant, the Court shall set a date not more than twenty (20) days from the date of the order for an adjudicatory hearing to determine whether the Tenants should be permanently evicted or whether the emergency interim eviction order should be set aside. The Landlord need not restate the facts and arguments set forth in his/her Complaint requesting an emergency interim eviction. Unless supplemented by an amended Complaint, the facts and arguments made in the Complaint requesting an emergency interim eviction shall constitute the Landlord's case for permanent eviction of the Tenant. The Tenant may file an answer denying the allegations of the Complaint and setting forth any factual dispute. The answer must be served as provided for in Section 68.12(g) hereof. Sections 68.12(j) and 68.12(k) dealing with discovery and evidence shall apply. The burden of proof shall be by preponderance of the evidence. The Court may award reasonable attorney's fees and costs of litigation. Any appeal of the Court's decision shall be made in accordance with the provisions of this Ordinance.

68.14 No Self-Help Eviction. No Landlord or Owner may compel a Tenant or other occupant to vacate any Premises in a forceful fashion or way which causes a breach of the peace without obtaining a Court order as provided in this Ordinance.

68.15 Principles of Construction. The following principles of construction apply to this Ordinance unless a different construction is obviously intended to obtain a reasonable result:

(a) Masculine words shall include the feminine, and singular words shall include the plural, and vice versa;

(b) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified;

(c) This Ordinance shall be construed as a whole to give effect to all its parts in a logical, consistent manner;
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(d) All other issues of construction shall be decided using a generally accepted principle of construction that will effect the underlying principles and purposes of this Ordinance.

(e) The provisions of this Ordinance shall supersede any inconsistent provisions in the Klamath Tribal Code or in the Rules of Court for the Klamath Tribal Court.

68.16 Severability. If any provisions of this Ordinance or the application of any provision to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidated or render unenforceable the remainder of this Ordinance and its application to any other person or circumstances and, to this end, the provisions of this Ordinance are severable.

68.17 Sovereign Immunity. Except as expressly and specifically waived by a resolution of the Klamath Tribes or by Klamath Tribal Law, the Klamath Tribes shall be immune from suit, and their officers and employees also shall be immune from suit for liability arising from the performance of their official duties.

Tribal Council Certification

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that at a regularly scheduled General Council meeting held on the 15th day of November, 2008, the General Council adopted this Ordinance to be effective as of 11-15-08, by a vote of 33 for, 6 opposed, and 5 abstentions. Quorum: 50

Joe Kirk
Chairman
The Klamath Tribes

Torina Case
Secretary
The Klamath Tribes

Date adopted: 11/15/08

Most Recent Amendment: 
August 14, 2008 – Motions & Actions for “Regular” Tribal Council meeting:

1. Motion by Will Hatcher, second by Brandi Decker to approve Resolution #2008-31 approving the Klamath Tribes Peacemaker Ordinance. Vote: 8 for, 0 opposed, 1 abstention. Motion passed.

2. Motion by Brandi Decker, second by Torina Case to approve Resolution #2008-32 approving the Klamath Tribes Landlord – Tenant Ordinance. Vote: 7 for, 0 opposed, 1 abstention. Motion passed.

3. Motion by Jeff Mitchell, second by Brandi Decker to approve Resolution #2008-30 approving and adopting the Klamath Tribes Housing Advisory Committee by-laws with changes. Vote: 8 for, 0 opposed, 1 abstention. Motion passed.

4. Motion by Joe Hobbs, second by Perry Chocktoot to approve Resolution #2008-44 Tribal Council Resolution requesting BIA to acquire “excess” Federal Property and place in trust for the Klamath Tribes. Vote: 7 for, 1 opposed, 1 abstention. Motion passed.
   (Christmas Valley property) – NOTE --- this property is still on the market, the BIA just put a request in for the property, but no decision has been made to date by GSA, who currently owns the property.

5. Personnel related motion – not reported to General Council.

6. Motion by Brandi Decker, second by Perry Chocktoot to approve the application to the EDA. Vote: 6 for, 0 opposed, 1 abstention. Motion passed.

7. Personnel related motion – not reported to General Council.

8. Motion by Will Hatcher, second by Jeannie McNair to approve Resolution #2008-40 approving Community Services department to submit an application to department of Health and Human Services for the FY 2009 community services block grant (CSBG). Vote: 7 for, 0 opposed, 1 abstention. Motion passed.

9. Motion by Joe Hobbs, second by Brandi Decker to approve Resolution #2008-43 approving Community Services department to apply for the Federal transit administration (FTA), public transportation on Indian Reservations, Tribal transit program grant for FY 2008 funding for enhancement of existing transportation services. Vote: 7 for, 0 opposed, 1 abstention. Motion passed.

10. Motion by Joe Hobbs, second by Jeannie McNair to approve the non-Judicial Court Personnel Code of Ethics as presented. Vote: 7 for, 0 opposed, 1 abstention. Motion passed.

11. Personnel related motion – not reported to General Council.

12. Personnel related motion – not reported to General Council.
13. Motion by Will Hatcher, second by Jeff Mitchell to approve Resolution #2008-46 proposing BIA funding of Attorney fees in Resource Protection work. Vote: 5 for, 0 opposed, 1 abstention. Motion passed.

14. Motion by Jeff Mitchell, second by Perry Chocktoot to appoint Harley “Duke” Kimbol to the Economic Development Corporation, effective 8-14-08 for a 3 year term. Vote: 6 for, 0 opposed, 1 abstention. Motion passed.

15. Motion by Perry Chocktoot, second by Brandi Decker to approve all 4 sets of minutes for Tribal Council; June 26, 2008 – Regular meeting with 1 wording correction, July 10, 2008 – Special Meeting, July 10, 2008 – Regular meeting, and July 23, 2008 – Special meeting. Vote: 5 for, 0 opposed, 2 abstentions. Motion passed.

16. Motion by Will Hatcher, second by Jeannie McNair to approve the Tribal Treasurer’s report for August 14, 2008. Vote: 5 for, 0 opposed, 2 abstentions. Motion passed.

**August 28, 2008 – Motions & Actions for “Regular” Tribal Council meeting:**

1. Motion by Jeff Mitchell, second by Brandi Decker to approve Resolution #2008-47 approving the Bureau of Justice Assistance planning Correctional Facilities on Tribal Lands correctional facilities comprehensive master plan project. Vote: 5 for, 0 opposed, 1 abstention. Motion passed.

2. Personnel related motion – not reported to General Council.

3. Motion by Will Hatcher, second by Perry Chocktoot to terminate the Partnership for a Drug Free Klamath County MOU with the Forest Service, because it is no longer needed. Vote: 5 for, 0 opposed, 1 abstention. Motion passed.

4. Motion by Will Hatcher, second by Jeff Mitchell to approve the Treasurer’s report for August 28th. Vote: 4 for, 0 opposed, 2 abstentions. Motion passed.

**September 11, 2008 – Motions & Actions for “Regular” Tribal Council meeting:**

1. Motion by Brandi Decker, second by Joe Hobbs to approve Resolution #2008-45 to express appreciation to Southern Oregon University’s Historic and continuing support of the Konaway Nika Tillicum Residential Academy. Vote: 7 for, 0 opposed, 2 abstentions. Motion passed.

2. Motion by Allen Foreman, second by Brandi Decker to approve Resolutions #2008-48 approving the option agreement related to acquiring certain properties known as the Mazama Tract and Resolution #2008-49 approving memorandum of understanding with the Trust for Public Lands for assistance to the Tribes in acquiring certain properties known as the Mazama Tract. Vote: 8 for, 0 opposed, 1 abstention. Motion passed.
3. Motion by Jeff Mitchell, second by Jeannie McNair to approve the Regular Tribal Council minutes for August 14, 2008. Vote: 4 for, 0 opposed, 3 abstentions. Motion passed.

4. Motion by Brandi Decker, second by Jeff Mitchell to approve the Regular Tribal Council minutes for August 28, 2008. Vote: 4 for, 0 opposed, 3 abstentions. Motion passed.

5. Motion by Joe Hobbs, second by Allen Foreman that Tribal Council approves the option agreement for the Lititia Kirk property pending discussion with the BIA. Vote: 8 for, 0 opposed, 1 abstention. Motion passed.

6. Motion by Allen Foreman, second by Joe Hobbs to approve Resolution #2008-50 supporting efforts to obtain a Sense of the Congress Resolution regarding the Klamath Basin Restoration Agreement. Vote: 8 for, 0 opposed, 1 abstention. Motion passed.

September 25, 2008 – Motions & Actions for Regular Tribal Council Meeting:

1. Motion by Allen Foreman, second by Perry Chocktoot to approve the EDA grant for the Gitwas green energy project. Vote: 6 for, 0 opposed, 1 abstention. Motion passed.

2. Motion by Allen Foreman, second by Will Hatcher to accept the Treasurer’s report for September 25, 2008. Vote: 4 for, 0 opposed, 2 abstentions. Motion passed.

3. Motion by Allen Foreman, second by Torina Case to approve EDC’s recommendation to approve James Coburn for a 3 year term on the EDC. Effective 9-25-08. Vote: 6 for, 0 opposed, 1 abstention. Motion passed.

October 9, 2008 – Motions & Actions for Regular Tribal Council meeting:

1. Motion by Will Hatcher, second by Joe Hobbs to table the “Petition and Referenda” Ordinance. Vote: 8 for, 0 opposed, 1 abstention. Motion passed.

2. Motion by Allen Foreman, second by Brandi Decker to table the Leasing Ordinance. Voice vote: ayes approved, no opposed, Motion passed.

3. Motion by Joe Hobbs, second by Jeannie McNair to approve the letter to send to the State for Education support. Vote: 7 for, 0 opposed, 1 abstention. Motion passed.

4. Motion by Jeff Mitchell, second by Allen Foreman to approve the letter of support for the Warm Springs Tribe to have a Casino at Cascade Locks. Vote: 7 for, 0 opposed, 1 abstention. Motion passed.

5. Motion by Joe Hobbs, second by Brandi Decker to approve the “Regular” Tribal Council minutes for September 11, 2008. Vote: 6 for, 0 opposed, 2 abstentions. Motion passed.

6. Motion by Jeff Mitchell, second by Allen Foreman to approve the “Regular” Tribal Council minutes for September 25, 2008. Vote: 5 for, 0 opposed, 3 abstentions. Motion passed.
October 30, 2008 – Motions & Actions for Regular Tribal Council meeting:

1. Motion by Joe Hobbs, second by Janice Miller to approve Resolution #2008-57 approving PacifiCorp’s request for permission to survey. Vote: 6 for, 1 opposed, 1 abstention. Motion passed.
2. Personnel related – not reported to General Council.
3. Motion by Allen Foreman, second by Will Hatcher to approve Resolution #2008-59 for relinquishments from the Klamath Tribe. Vote: 5 for, 0 opposed, 3 abstentions. Motion passed. (names available from the Enrollment department).
4. Motion by Perry Chocktoot, second by Will Hatcher to approve Resolution #2008-58 for enrollment in the Klamath Tribes. Vote: 6 for, 0 opposed, 2 abstentions. Motion passed. (names available in the Enrollment department).
5. Motion by Allen Foreman, second by Jeannie McNair to approve the Treasurer’s report for October 30th, 2008. Vote: 7 for, 0 opposed, 1 abstention. Motion passed.

Motions and Actions typed by Torina Case, Tribal Council Secretary