

**SHIWITS BAND OF PAIUTE INDIANS
FRIVOLOUS AND BAD-FAITH CLAIMS COST RECOVERY ORDINANCE**

ARTICLE 1: PURPOSE, AND AUTHORITY

- A. Title. This Ordinance shall be known and may be cited as the “Shivwits Band Frivolous and Bad-Faith Claims Cost Recovery Ordinance” or the “CCR Ordinance.”
- B. Authority. This Ordinance is promulgated pursuant to the inherent sovereign authority of the Shivwits Band of Paiutes to govern the conduct of its members, protect Band assets and fiscal integrity, and establish administrative enforcement mechanisms, in addition to Article XIII, Section 1, and Article XII, Section 3 of the Bylaws of the Shivwits Band of Southern Paiutes; Article VIII, Section 1 and Sections 2(c) and 2(j) of the Constitution of the Paiute Indian Tribe of Utah; the Paiute Restoration Act, Public Law 96-227, 94 Stat. 317; the Indian Reorganization Act, 25 U.S.C. § 5101 *et seq.*, and, Shivwits Band Council Resolution No. 2026-__.
- C. Purpose. The purpose of this Ordinance is to protect the Shivwits Band’s limited governmental resources from misuse through frivolous, malicious, or bad-faith legal actions brought by members, and to provide a fair administrative process for recovery of costs incurred by the Shivwits Band.
- D. Scope. These policies and procedures apply to the members of the Shivwits Band of Paiutes and governs claims brought against the Shivwits Band, its instrumentalities, departments, subdivisions, officials, and employees acting in their official capacities.

ARTICLE 2: DEFINITIONS

- A. Definitions. For purposes of this Ordinance:
 - 1. “Administrative Costs” means reasonable and necessary expenses incurred by the Shivwits Band, including attorney fees, staff time, expert or consultant fees, and litigation- or claim-related expenses.
 - 2. “Bad Faith” means conduct including, but not limited to filing a claim to harass, intimidate, or burden the Band; knowingly presenting false or misleading information; and/or repeated filing of substantially similar meritless claims.
 - 3. “Claim” means any written complaint, petition, grievance, administrative appeal, or legal action, whether formal or informal, submitted to or filed with the Band, its departments, or any judicial or quasi-judicial body involving the Shivwits Band or its instrumentalities, subdivisions, entities, etc.
 - 4. “Frivolous Claim” means a claim, complaint, or legal action that lacks a reasonable basis in law or fact and could not be supported by a good-faith argument.
 - 5. “Member” means any enrolled member of the Shivwits Band of Paiutes.

ARTICLE 3: PROHIBITED CONDUCT

No Member shall file, pursue, or maintain a frivolous claim against the Shivwits Band, or engage in bad-faith use of the Band's legal, administrative, or judicial processes.

ARTICLE 4: ADMINISTRATIVE ENFORCEMENT AUTHORITY

- A. The Shivwits Band Council may designate the Shivwits Band attorney or an Administrative Officer (Enforcement Authority) to administer this Ordinance.
- B. The Enforcement Authority shall have the power to investigate alleged violations; initiate administrative proceedings; and recommend cost recovery orders as provided herein.

ARTICLE 5: INITIATION OF PROCEEDINGS

- A. Proceedings may be initiated upon referral by the Band Council; referral by the Band Attorney; or determination by the Enforcement Authority.
- B. The Enforcement Authority shall issue a written Notice of Alleged Violation including (1) description of the conduct; (2) identification of the claim(s) at issue; (3) statement of potential liability; and (4) explanation of rights under this Ordinance.
- C. Notice shall be delivered by certified mail, personal service, email, or other method reasonably calculated to ensure receipt.

ARTICLE 6: DUE PROCESS AND OPPORTUNITY TO RESPOND

- A. The Member shall be provided
 - 1. Reasonable written notice; and
 - 2. At least thirty days to respond.
- B. The Enforcement Authority bears the burden of proving violation by a preponderance of the evidence.
- C. Any Enforcement Authority or Band Council member with a personal interest in the matter shall recuse themselves from participation.

ARTICLE 7: FINDINGS AND DECISION

- A. The Enforcement Authority shall issue a written decision including findings of fact, conclusions of law, and a determination of whether the conduct was frivolous or in bad faith.

- B. The Shivwits Band Council may adopt, modify, or reject the decision of the Enforcement Authority.

ARTICLE 8: COST RECOVERY

- A. Upon a finding of violation, the Band may impose a cost recovery order.
- B. Limitations of cost recovery:
 - 1. Costs must be reasonable and documented.
 - 2. Only costs directly attributable to the violation may be assessed.
 - 3. Costs shall be calculated using reasonable and customary rates and must be supported by contemporaneous records.
- C. Factors to Consider by Band Council in determination of cost recovery order:
 - 1. Severity of misconduct
 - 2. Intent of Member
 - 3. Impact on Band resources
 - 4. Prior conduct
- D. Any cost recovery order shall be reasonably proportional to the violation and supported by the evidentiary record.

ARTICLE 9: COLLECTION AND ENFORCEMENT

- A. The Band may recover assessed amounts through:
 - 1. Offsets against payments made to Band members
 - 2. Offsets against Band benefits
 - 3. Wage or contract payment offsets, where authorized
 - 4. Other lawful administrative collection measures.
- B. Payment plans may be authorized at the Band's discretion.
- C. All collection actions shall be carried out in a manner consistent with applicable Band law and due process protections.

ARTICLE 10: APPEAL

- A. The Member may appeal the final decision to the Band Council within 30 days.
- B. The reviewing body shall determine whether
 - 1. Due process was provided; and
 - 2. The decision was supported by substantial evidence; and
 - 3. The decision was arbitrary, capricious, or contrary to law.

- C. The procedures set forth in this Ordinance constitute the exclusive means for addressing violations under this Ordinance unless otherwise determined by the Band Council.

ARTICLE 11: MISCELLANEOUS

- A. No violation shall be found if the Member conducted a reasonable inquiry prior to filing and the claim was made in good faith.
- B. No action shall be taken under this Ordinance for the purpose of retaliation or to suppress legitimate, good-faith claims.
- C. If any provision of this Ordinance is found invalid, the remaining provisions shall remain in full force and effect.
- D. Nothing in this Ordinance shall be construed as a waiver of the sovereign immunity of the Shivwits Band of Paiutes, its officers, employees, or agents. Any waiver of sovereign immunity must be explicit, unequivocal, and approved by the Band Council.
- E. The Shivwits Band retains civil regulatory jurisdiction over its Members for purposes of enforcing this Ordinance.