

OMAHA TRIBAL CODE (2013)

TITLE 37. TRIBAL UTILITY COMMISSION

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Source: Omaha Tribal Council Resolution No. 79-34 (9-5-79).

CHAPTER 1. GENERAL PROVISIONS

SECTION 37-1-1. Establishment of Utility Commission.

Pursuant to the authority vested in the Omaha Tribe by its Constitution, and particularly by Article IV, Sections m, o & q thereof, and its authority to provide for the health, safety, morals and welfare of the Tribe, the Tribal Council of the Omaha Tribe hereby establishes a public body known as the Omaha Tribal Utility Commission (hereinafter referred to as the Commission), and enacts this Title which shall establish the purposes, powers and duties of the Commission.

In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the Commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this Title. A copy of the Title duly certified by the Secretary of the Council shall be admissible in evidence in any suit, action or proceeding.

CHAPTER 2. PURPOSES

SECTION 37-2-1. Declaration of Need.

It is hereby declared:

- (a) That there exists on the Omaha Reservation inadequate, uncoordinated and poorly managed utility services to meet the daily needs of Omaha and other people living on the Reservation;
- (b) That these conditions cause and continue a menace to health, safety and welfare of the people; and that the lack of good quality, well managed utilities necessitates excessive and disproportionate expenditures of public and private funds for day to day living as well as public health and safety protection, fire and accident control and other public services;
- (c) That the provision of needed new and additional housing is impossible without adequate utility support;
- (d) That the provision of adequate utilities is not and cannot be accomplished in most cases by off-reservation private enterprise
- (e) That the providing of public utility services are proper uses and purposes for which money may be spent and private property acquired and are governmental functions of Tribal concern;
- (f) That the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

CHAPTER 3. PURPOSES

SECTION 37-3-1. Purposes of Utility Commission.

The Commission shall be organized and operated for the Purposes of:

- (a) Providing a safe and sanitary domestic water supply for the Reservation including the town of Macy;
- (b) Providing a sanitary sewer collection and disposal system for the town of Macy and such other areas as may become practical.
- (c) Operating a refuse collection and disposal system.
- (d) Exploring and developing, as appropriate, heating fuel distribution systems (i.e. propane, natural

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gas, fuel oil, coal, wood).

- (e) Exploring and developing, if and when feasible, an electrical distribution system.
- (f) Exploring and establishing, if feasible, a public telephone system.
- (g) Considering at the request of the Omaha Tribal Council and developing where possible any and all types of public utility services for the Omaha Reservation as may be needed.
- (h) Providing management; structure, staff, facilities, materials and equipment; and establishing, accumulating and utilizing resources for the effective operation and maintenance of all the utilities under its control to meet the public need.
- (i) Providing employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of various utilities which it operates on the Reservation.

CHAPTER 4. DEFINITIONS

SECTION 37-4-1. Definitions.

The following terms, wherever used or referred to in this Title, shall have the following respective meanings, unless a different meaning clearly appears from the context:

- (a) "Area of Operation" means all areas within the jurisdiction of the Tribe.
- (b) "Board" means the Board of Commissioners of the Commission.
- (c) "Council" means the Omaha Tribal Council.
- (d) "Federal Government" includes the United States of America, including the Indian Health Service, the Bureau of Indian Affairs, the Farmers Home Administration, the Department of Housing and Urban Development and any other agency or instrumentality, corporate or otherwise of the United States of America.
- (e) "Obligations" means any notes, bonds, interim certificates, debentures, or other forms of obligation issued by the Commission pursuant to this Title.
- (f) "Obligee" includes any holder of an obligation, agent or trustee for any holder of an obligation or lessor demising to the Commission *property* used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal Government when it is a party to any contract with the Commission in respect to a utility project.
- (g) "User" shall mean any person, business or organization that receives any utility service provided by the Commission. "User" shall also mean the owner of any property receiving utility services where there is no agreement with a tenant of the property other than the owner.
- (h) "User Fees" and "User Revenues" shall mean amount charged- users for receipt of or the availability of utility services.
- (i) "Utility" shall mean any publicly provided utility service as water, sewer, electricity, natural gas, propane, fuel oil, telephone, solid waste disposal, etc.

CHAPTER 5. BOARD OF COMMISSIONERS

SECTION 37-5-1. Board of Commissioners; Membership; Appointment.

(a) The affairs of the Commission shall be managed by a Board of Commissioners composed of five persons.

(1) The Board members shall be appointed, and may be reappointed, by the Council. A certificate of the Secretary of the Council as to the appointment or reappointment of any commissioner shall be conclusive evidence of the due and proper appointment of the commissioner.

(2) A commissioner may be a member or non-member of the Tribe, and may be a member or non-

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member of the Tribal Council.

(3) No person shall be barred from serving on the Board because he is a user of a utility service of the Commission; and such commissioner shall be entitled to fully participate in all meetings concerning matters that affect all of the users, even though such matters affect him as well. However, no such commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his capacity as a user), or to be counted or treated as a member of the Board, concerning any matter involving his individual rights, obligations or status as a user.

(b) The term of office shall be five years and staggered. When the Board is first established, one member's term shall be designated to expire in one year, another to expire in two years, a third to expire in three years, one in four years and the last in five years. Thereafter, all appointments shall be for five years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each member of the Board shall hold office until his successor has been appointed and has qualified.

(c) The Council shall name one of the Commissioners as Chairman of the Board. The Board shall elect from among its members a Vice-Chairman, a Secretary, and a Treasurer and any member may hold two of these positions. In the absence of the Chairman, the Vice-Chairman shall preside and in the absence of both the Chairman and the Vice-Chairman, the Secretary shall preside.

(d) A member of the Board may be removed by the appointing power for serious inefficiency or neglect of duty or for misconduct in office, but only after a hearing before the appointing power and only after the member has been given a written notice of the specific charges against him at least 10 days prior to the hearing. At any such hearing, the member shall have the opportunity to be heard in person or by counsel and to present witnesses in his behalf. In the event of removal of any Board member, a record of the proceedings, together with the charges and findings thereon, shall be filed with the appointing power a copy thereof sent to the Commission Office.

(e) The Commissioners shall not receive compensation for their services but shall be entitled to compensation for expenses, including travel expenses, incurred in the discharge of their duties.

(f) A majority of the full Board (i.e., notwithstanding the existence of any vacancies) shall constitute a quorum for the transaction of business, but no Board action shall be taken by a vote of less than a majority of such full Board.

(g) The Secretary shall keep complete and accurate records of all meetings and actions taken by the Board.

(h) The Treasurer shall keep full and accurate financial records, make periodic reports to the Board, and submit a complete annual report, in written form, to the Council as required by Article VII, Section 1 of this Title.

(i) In appointing the Board Members, the Council will assure that the Board has a broad representation and includes at least one rural resident, two Macy Village Residents, one non-Indian Resident and one Tribal Council Member.

SECTION 37-5-2. Meetings.

Meetings of the Board shall be held at regular intervals as provided in the by-laws. Emergency meetings may be held upon 24 hours actual notice and business transacted, provided that not less than a majority of the full Board concurs in the proposed action.

CHAPTER 6. POWERS

SECTION 37-6-1. Perpetual Succession.

The Authority shall have perpetual succession in its corporate name.

SECTION 37-6-2. Limited Waiver of Sovereign Immunity.

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The Council hereby gives its irrevocable consent to allowing the Commission to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this Title and hereby authorizes the Commission to agree by contract to waive any immunity from suit which it might otherwise have; but the Tribe shall not be liable for the debts or obligations of the Commission.

SECTION 37-6-3. Powers of Utility Commission.

The Commission shall have the following powers which it may exercise consistent with the purposes for which it is established:

- (a) To adopt and use a corporate seal.
- (b) To enter into agreements, contracts and understandings with any governmental agency, Federal, State or local (including the Council) or with any person, partnership, corporation or Indian tribe; and to agree to any conditions attached to federal financial assistance.
- (c) To agree, notwithstanding anything to the contrary contained in this Title or in any other provision of *law*, to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, the development or operation of projects; and the Commission may include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid to the project.
- (d) To obligate itself, in any contract with the federal government for contributions to the Commission, to convey to the federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the Commission is subject; and such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract: Provided, that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the Commission the project as then constituted.
- (e) To lease property and obtain easements and rights-of-way from the Tribe and others for such periods as are authorized by law, and to hold-and manage or to sublease the same.
- (f) To borrow or lend money, to issue temporary or long term evidence of indebtedness and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of Article VI of this Title.
- (g) To pledge the assets and receipts of the Commission as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein.
- (h) To purchase land or interests in land or take the same by gift; to lease land or interests in land to the extent provided by law.
- (i) To undertake and carry out studies and analysis of utility needs, to prepare utility plans, to execute the same, to operate projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof.
- (j) With respect to any utility hook-ups within the Commission's service area to lease or rent, sell, enter into lease-purchase agreements for any meters, utility lines, containers or equipment; to establish hook-up and connection fees; to establish and revise user fees or required monthly payments; to set utility rates; to make rules and regulations concerning the use of utilities including the establishment of priorities of use, care and management of equipment, health and safety provisions and controls and to make such further rules and regulations as the Board may deem necessary and desirable to effectuate the powers granted by this Title.
- (k) To finance purchase of utility hook-ups and meters by an eligible user in accordance with regulations and requirements established by the Commission.

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(l) To terminate any utility use agreement when the user has violated the terms of such agreement, or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement; and to bring action for recovery of amounts.

(m) To establish procedures and requirements for utility connections to utility systems that insure that utilities shall be made available to all persons in the utility service area.

(n) To purchase insurance from any stock or mutual company for any property or against any risk or hazards.

(o) To invest such funds as are not required for immediate disbursement

(p) To establish and maintain such bank accounts as may be necessary or convenient.

(q) To employ an executive director, technical and maintenance personnel, and such other offices and employees, permanent or temporary, as the Commission may require; and to delegate to such officers and employees such powers of duties as the Board shall deem proper.

(r) To take such further actions as are commonly engaged in by public bodies of this character as the Board may deem necessary and desirable to effectuate the purposes of the Commission.

(s) To join or cooperate with any other public agency or agencies operating under the laws or ordinances of a State or another tribe in the exercise, either jointly or otherwise, of any or all of the powers of the Commission and such other public agency or agencies for the purpose of financing (including but not limited to the issuance of notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating, or contracting with respect to a utility project or projects of the Commission or such other public agency or agencies. For such purpose, the Commission may by resolution prescribe and authorize any other public agency or agencies, so joining or cooperating with the Commission, to act, on the Commission's behalf with respect to any or all powers, as the Commission's agent or otherwise, in the name of the Commission or in the name of such agency or agencies.

(t) To adopt such bylaws as the Board deems necessary and appropriate.

SECTION 37-6-4. Securing Financial Aid or Cooperation of Federal Government.

It is the purpose and intent of this Title to authorize the Commission to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any project by the Commission.

SECTION 37-6-5. Exemption from Contrary Tribal Law Regarding Tribal Property.

No ordinance or other enactment of the Tribe with respect to the acquisition, operation, or disposition of Tribal property shall be applicable to the Commission in its operations pursuant to this Title.

CHAPTER 7. OBLIGATIONS

SECTION 37-7-1. Issuance of Obligations Authorized.

The Commission may issue obligations from time to time in its discretion for any of its purposes and may also issue refunding obligations for the purpose of paying or retiring obligations previously issued by it. The Commission may issue such types of obligations as it may determine, including obligations on which the principal and interest are payable:

(a) Exclusively from the income and revenues of the project financed with the proceeds of such obligations, or with such income and revenues together with a grant from the federal government in aid of such project.

(b) Exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such obligations; or

(c) From its revenues generally. Any of such obligations may be additionally secured by a pledge of

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any revenues of any project or other property of the Commission.

SECTION 37-7-2. Limited Liability.

Neither the commissioners of the Commission nor any person executing the obligations shall be liable personally on the obligations by reason of issuance thereof.

SECTION 37-7-3. Not Obligation of Tribe.

The notes and other obligations of the Commission shall not be a debt of the Tribe and the obligations shall so state on their face.

SECTION 37-7-4. Tax Exemption.

Obligations of the Commission are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Tribe. The tax exemption provisions of this Title shall be considered part of the security for the repayment of obligations and shall constitute, by virtue of this Title and without necessity of being restated in the obligations, a contract between (a) the Commission and the Tribe, and (b) the holders of obligations and each of them, including all transferees of the obligations from time to time.

SECTION 37-7-5. Manner of Issuance and Sale of Obligations.

Obligations shall be issued and sold in the following manner:

- (a) Obligations of the Commission shall be authorized by a resolution adopted by the vote of a majority of the full Board and may be issued in one or more series.
- (b) The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide.
- (c) The obligations may be sold at public or private sale at not less than par.
- (d) In case any of the commissioners of the Commission whose signatures appear on any obligations cease to be commissioners before the delivery of such obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners had remained in office until delivery.

SECTION 37-7-6. Presumption in Proceedings Regarding Validity of Obligation.

Obligations of the Commission shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any obligation of the Commission or the security therefor, any such obligation reciting in substance that it has been issued by the Commission to aid in financing a project pursuant to this Title shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this Title.

SECTION 37-7-7. Powers of Utility Commission in Issuance of Obligations.

- (a) In connection with the issuance of obligations or incurring of obligations under leases and to secure the payment of such obligations, the Commission, subject to the limitations in this Title, may:
 - (b) Pledge all or any part of its gross or net user fees or revenues to which its right then exists or may thereafter come into existence.
 - (c) Provide for the powers and duties of obligees and limit their liabilities; and provide the terms and conditions on which such obligees may enforce any covenant or rights securing or relating to the obligations.
 - (d) Covenant against pledging all or any part of its fees and revenues or against mortgaging any or all

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of its real or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.

- (e) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof.
- (f) Covenant as to what other or additional debts or obligations may be incurred by it.
- (g) Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof.
- (h) Provide for the replacement of lost, destroyed or mutilated obligations.
- (i) Covenant against extending the time for the payment of its obligations or interest thereon.
- (j) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof.
- (k) Covenant concerning the revenues and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by fees and other revenues, and as to the use and disposition to be made thereof.
- (l) Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves or other purposes, and covenant as to the use and disposition of the monies held in such funds.
- (m) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders of which must consent thereto, and the manner in which such consent may be given.
- (n) Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance monies.
- (o) Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation.
- (p) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.
- (q) Vest in any obligees or any proportion of them the right to enforce the payment of the obligations of any covenants securing or relating to the obligations.
- (r) Exercise all or any part or combination of the powers granted in this section.
- (s) Make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character.
- (t) Make any covenants and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, in the absolute discretion of the Authority, tending to make the obligations more marketable although the covenants, acts or things are not enumerate in this section.

CHAPTER 8. MISCELLANEOUS

SECTION 37-8-1. Annual Report Required.

The Commission shall submit an annual report, signed by the Chairman of the Board, to the Council showing:

- (a) A summary of the year's activities.
- (b) The financial condition of the Commission.
- (c) The condition of the properties.

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- (d) The number of connections on each utility system.
- (e) Any significant problems and accomplishments.
- (f) Plans for the future.
- (g) Such other information as the Commission or the Council deem pertinent.

SECTION 37-8-2. Disclosure of Proposed Interested Transactions.

During his tenure and for one year thereafter, no commissioner, officer or employee of the Commission, or any member of any governing body of the Tribe, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisition, he discloses his interest in writing to the Commission and such disclosure is entered upon the minutes of the Commission, and the commissioner, officer or employee shall not participate in any action by the Commission relating to the property or contract in which he has any such interest. If any commissioner, officer or employee of the Commission involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as a commissioner, officer or employee, the commissioner, officer or employee, in any such event, shall immediately disclose his interest in writing to the Commission, and such disclosure shall be entered upon the minutes of the Commission, and the commissioner, officer or employee shall not participate in any action by the Commission relating to the property or contract in which he has any such interest. Any violation of the foregoing provisions of this section shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in obligations of the Commission issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Board as provided in Article IV, Section 1(a)(4).

SECTION 37-8-3. Compliance with Federal Regulations and Requirements.

Each project developed or operated under a contract providing for federal financial assistance shall be developed and operated in compliance with all requirements of such contract and applicable federal legislation, and with all regulations and requirements prescribed from time to time by the federal government in connection with such assistance.

SECTION 37-8-4. Bond Required.

The Commission shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

SECTION 37-8-5. No Profits.

The Commission shall not construct or operate any project for profit.

SECTION 37-8-6. Public Property Exempt from Taxation.

The property of the Commission is declared to be public property used for essential public and governmental purposes and such property and the Commission are exempt from all taxes and special assessments of the Tribe.

SECTION 37-8-7. Property Exempt from Execution; Exception.

All property including funds acquired or held by the Commission pursuant to this Title shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Commission be a charge or upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Commission on its fees or revenues of the right of the

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federal government to pursue any remedies conferred upon it pursuant to the provision of this Title of the right of the Commission to bring eviction actions in accordance with Article V, Section 3 (1).

CHAPTER 9. COOPERATION IN CONNECTION WITH PROJECTS

SECTION 37-9-1. Bond Required.

For the purpose of aiding and cooperating in the planning, undertaking construction or operation of projects, the Tribe hereby agrees that:

- (a) It will not levy or impose any real or personal property taxes or special assessments upon the Commission or any project of the Commission.
- (b) It will furnish or cause to be furnished to the Commission and the users of projects all services and facilities of the same character and to the same extent as the Tribe furnishes from time to time without cost or charge to other utility users.
- (c) Insofar as it may lawfully do so, it will grant such deviations from any present or future building codes of the Tribe as are reasonable and necessary to promote economy and efficiency in the development and operation of any project, and at the same time safeguard health and safety, and make such changes in any zoning of sites and surrounding territory of any project as are reasonable and necessary for the development and protection of such project, and the surrounding territory
- (d) It will do any and all things, within its lawful powers, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of projects.
- (e) The Tribal Government hereby declares that the powers of the Tribal Government shall be vigorously utilized to enforce collection from users for nonpayment or other contract violations including action through the appropriate courts.
- (f) The Tribal Courts shall have jurisdiction to hear and determine an action for collection of user fees. The Tribal Government hereby declares that the powers of the Tribal Courts shall be vigorously utilized to enforce collection from users for nonpayment or other contract violations.

CHAPTER 10. APPROVAL BY SECRETARY OF THE INTERIOR

SECTION 37-10-1. When Approval By Secretary of the Interior Required.

With respect to any financial assistance contract between the Commission and the federal government, the Commission shall obtain the approval of the Secretary of the Interior of his designee.

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