



Chapter 60

General Welfare Ordinance Pueblo of Isleta

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1 **CHAPTER 60 – GENERAL WELFARE ORDINANCE ENACTED PURSUANT TO**
2 **PUEBLO OF ISLETA COUNCIL RESOLUTION NO. 2020-**

3
4 **ARTICLE 60.1 TITLE**

5 This Chapter shall be known as the Pueblo of Isleta “General Welfare Ordinance” (hereinafter
6 referred to in this Chapter as this “Ordinance”) and shall be cited as P.O.I. Ordinance, Chapter
7 60.

8
9 **ARTICLE 60.2 AUTHORITY**

10
11 This Ordinance is enacted pursuant to the inherent governmental powers of the Pueblo of Isleta
12 and through Article V, Section 2 (e) of the Pueblo of Isleta Tribal Constitution.

13
14 **ARTICLE 60.3 PURPOSES**

15
16 The purpose of this Ordinance is to establish a legal mechanism to provide assistance to Tribal
17 Members that promotes the general welfare of the Tribe and is excludable from the gross income
18 of those tribal member recipients. The Internal Revenue Service (“IRS”) in IRS Revenue
19 Procedure 2014-35 provides for a safe harbor program under which, if approved by the Pueblo of
20 Isleta (“Pueblo”) and in writing, the IRS will presume need and thus exclude these benefits.
21 Accordingly, this Ordinance sets forth a framework to establish programs consistent with IRS
22 Revenue Procedure 2014-35 to ensure compliance with Internal Revenue Code Section 139E and
23 the General Welfare Doctrine that allows for the exclusion of these types of benefits from the
24 gross income of its recipients. The benefits authorized by this Ordinance are intended to qualify
25 for favorable tax treatment under the General Welfare Doctrine and Internal Revenue Code
26 Section 139E to the fullest extent permitted by law. This Ordinance shall apply retroactively to
27 general welfare programs established by the Pueblo.

28
29 Assistance provided under this Ordinance:

- 30
31 a) Shall be available to any tribal member recipients who qualify in accordance with
32 program policies, subject to budgetary restraints;
33
34 b) Shall be provided in a way that does not discriminate in favor of the Governor,
35 Lieutenant Governors, members of the Tribal Council, or appointed officials;
36
37 c) Shall not be provided as compensation for goods and/or services;
38
39 d) Shall not be lavish or extravagant under the facts and circumstances, as determined by
40 the Pueblo;
41
42 e) Shall be an unfunded arrangement for tax purposes and shall be limited to funds
43 appropriated, at the discretion of the Tribal Council. All amounts appropriated by the
44 Pueblo for assistance purposes shall remain general assets of the Pueblo until such
45 payments are distributed;
46



- 1 f) Shall not be subject to information reporting by the Pueblo to the IRS;
2
3 g) Without limitation, assistance provided under this Ordinance shall therefore be
4 treated as nontaxable hereunder:
5 i. assistance that, when provided, satisfies the requirements for the exemption
6 under Internal Revenue Code Section 139E;
7
8 ii. assistance that is provided under an IRS safe harbor program;
9
10 iii. assistance that, when provided, qualifies for exclusion under the IRS General
11 Test of the General Welfare Exclusion; or
12
13 iv. assistance that, when provided, meets another express exemption under the
14 Internal Revenue Code, such as the exemption provided for Tribal medical
15 expenses under Internal Revenue Code Section 139D, or that meets other
16 recognized exemptions adopted by the IRS or is recognized in common law of
17 the General Welfare Doctrine.
18

19 **ARTICLE 60.4 RATIFICATION OF PRIOR ACTS**

20
21 This Ordinance is not intended to be construed as creating new general welfare assistance rights.
22 Rather, this Ordinance is intended to codify existing practices and procedures used by the Pueblo
23 to administer its general welfare assistance.
24

25 Assistance of the nature addressed in this Ordinance provided prior to the enactment of this
26 Ordinance is hereby ratified and confirmed as general welfare assistance provided pursuant to
27 the exercise by the Pueblo of its inherent sovereignty.
28

29 **ARTICLE 60.5 SOVEREIGN IMMUNITY PRESERVED**

30
31 Nothing in this Ordinance shall be interpreted as a waiver of the Pueblo's sovereign immunity
32 from suit, or as an authorization for a claim for monetary damages against the Pueblo.
33

34 **ARTICLE 60.6 DEFINITIONS**

- 35
36 a) "Approved Program" means any program or action to provide general welfare
37 assistance that is intended to qualify for treatment under the General Welfare
38 Exclusion, which is adopted as a policy by the Tribal Council.
39
40 b) "Benefits" means any assistance provided through an Approved Program, including
41 payments, which is provided pursuant to this Ordinance.
42
43 c) "General Test" means any assistance that is:
44
45 i. Paid by or on behalf of the Pueblo in accordance with an Approved Program;
46 ii. Based on either needs of the community itself or upon individual needs of the



- 1 Recipient, which need not be financial in nature;
- 2 iii. Provided under a declared emergency;
- 3 iv. Not compensation for Services; and
- 4 v. Not per capita payments.

5

6 d) “General Welfare Exclusion” means any benefit and shall be treated as nontaxable
7 income under federal law so long as it satisfies the requirements for exclusion under
8 Internal Revenue Code Section 139E, as it is provided under a safe harbor program,
9 or it meets the General Test.

10

11 e) “Lavish” or “Extravagant” shall have the meaning determined by the Tribal Council
12 in its sole discretion based on all facts and circumstances, taking into account needs
13 unique to the Pueblo, as well as the social purpose being serviced by the particular
14 assistance at hand, except as otherwise may be required for compliance with final
15 guidance issued under Internal Revenue Code Section 139E following consultation by
16 the Pueblo and the IRS.

17

18 f) “Recipient” means any tribal member entitled to receive assistance in accordance
19 with specific Approved Program requirements.

20

21 g) “Tribal Member” means any person recognized as being an Isleta tribal member by
22 the laws of the Tribe.

23

24 h) “Tribe” refers to the Pueblo of Isleta.

25

26 **ARTICLE 60.7 NO GUARANTEE OF BENEFITS**

27

28 The Pueblo does not guarantee Benefits under this Ordinance. Benefits shall not be treated as a
29 resource or asset of a Recipient for any purpose and no Recipient shall have an interest in or right
30 to any funds budgeted for, or set aside for, Approved Programs until paid. The Pueblo reserves
31 the right to cancel, adjust, modify or revoke any benefit treated as a resource of the Recipient.
32 Approved Programs shall be administered at all times to avoid triggering of the Doctrines of
33 “Constructive Receipt” and/or “Economic Benefit” to the extent such Doctrines are inconsistent
34 with the purposes of this Ordinance.

35

36 **ARTICLE 60.8 RIGHTS AND LIABILITIES**

37

38 a) All the rights and liabilities associated with the enactment of the Ordinance or the
39 Benefits made hereunder shall be construed and enforced according to the laws of the
40 Pueblo of Isleta and applicable federal law.

41

42 b) Nothing in this Ordinance or the related policies or procedures adopted for its
43 implementation, if any, shall be construed to make applicable to the Pueblo any laws
44 or regulations which are otherwise inapplicable to the Pueblo.

45

46 c) Adoption of Approved Programs is not intended to relieve or diminish the federal
47 government of its funding and trust responsibilities. Nothing herein shall waive the



1 Pueblo’s right to seek funding shortfalls or to enforce the trust rights of the Pueblo
2 and its members.
3

4 **ARTICLE 60.9 PROGRAM APPROVAL**
5

- 6 a) The Tribal Council shall approve programs consistent with the purposes set forth in
7 this Ordinance. Each Approved Program shall be consistent with the General Welfare
8 Doctrine as to purpose, eligibility, and funding. In the absence of specific
9 requirements to the contrary, all Approved Programs shall be deemed to incorporate
10 eligibility criteria that comply with Internal Revenue Code Section 139E.
11
- 12 b) At a minimum, program policies submitted for review and approval shall:
13
- 14 i. Not discriminate in favor of the Governor, Lieutenant Governors, members of
 - 15 the Tribal Council, or appointed officers;
 - 16 ii. Ensure Benefits are available to any Tribal Member who meets such policy
 - 17 requirements;
 - 18 iii. Declare that the Benefits provided are for the promotion of the general
 - 19 welfare;
 - 20 iv. Determine that the Benefits are not Lavish or Extravagant; and
 - 21 v. Confirm that the provision of Benefits is not compensation for services.
22

23 **ARTICLE 60.10 PROGRAM ELIGIBILITY**
24

- 25 a) Eligibility for Benefits shall be limited to Tribal Members. Approved Programs may
26 limit Benefits to an identified group of Tribal Members.
27
- 28 b) Programs comprising descriptions, including eligibility rules and limitations, may be
29 presented by the Governor to the Tribal Council for approval in accordance with this
30 Ordinance.
31
- 32 c) Only those programs that are adopted by the Tribal Council shall be considered to be
33 in force and effect.
34

35 **ARTICLE 60.11 MEANS TEST NOT REQUIRED**
36

37 Consistent with Internal Revenue Code Section 139E and the IRS safe harbor guidance,
38 Approved Programs may be based on nonfinancial need under the General Test that are not
39 individually means tested. Nonetheless, programs providing Benefits where eligibility is
40 financial-need based may also be approved. Furthermore, in times of declared emergencies by
41 the Pueblo or federal government, the Pueblo may need to provide Benefits through Approved
42 Programs on an emergency basis.
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1 **ARTICLE 60.12 TRANSFERABILITY OF RECIPIENT’S BENEFIT**

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3 A Recipient’s eligibility for a Benefit is not subject to anticipation, alienation, sale, transfer,
4 assignment, pledge, encumbrance, attachment or garnishment by creditors of the Recipient.
5

6 **ARTICLE 60.13 CULTURALLY-RELATED GIFTS AND HONORARIUMS**

7
8 For safe harbor programs, and subject to amendments to Revenue Procedure 2014-35 hereafter,
9 the Pueblo will presume that individual need is met for appointed leaders who receive the
10 following benefits, and that the benefits do not represent compensation for services:
11

- 12 a) Benefits provided under a Pueblo program that are items of cultural significance that
13 are not Lavish or Extravagant under the facts and circumstances, as determined by the
14 Governor; or
- 15
- 16 b) Nominal cash honoraria provided.
17

18 **ARTICLE 60.14 SAFE HARBOR PROGRAMS**

- 19
- 20 a) Programs that meet the following general criteria for safe harbor treatment and
21 provide qualifying safe harbor benefits shall be treated as nontaxable Benefits under
22 the General Welfare Exclusion without the Recipient having to demonstrate
23 individual need:
24
 - 25 i. The benefit is provided under a specific Approved Program of the Pueblo;
 - 26 ii. The program has written policies specifying how individuals may qualify for
27 the benefit;
 - 28 iii. The benefit is available to any Tribal Member or identified group of Tribal
29 Members who satisfy the program policies, subject to budgetary restraints;
 - 30 iv. The distribution of Benefits from the program does not discriminate in favor
31 of the Governor, Lieutenant Governors, members of the Tribal Council, or
32 appointed officers;
 - 33 v. The benefit is not compensation for goods or services; and
 - 34 vi. The benefit is not Lavish or Extravagant under the facts and circumstances, as
35 determined by the Tribal Council.
- 36
- 37 b) The following benefits may be provided under a safe harbor program. The benefits
38 listed in the parenthetical language herein are illustrative only, rather than an
39 exhaustive list. Thus, a benefit may qualify for exclusion from gross income as a safe
40 harbor program even though the benefit is not expressly described in the parenthetical
41 language herein, provided that it meets all other requirements of the Internal Revenue
42 Service Code and Revenue Procedure 2014-35, as may be amended:
43
 - 44 i. Housing Programs. Programs relating to principal residences and ancillary
45 structures that are not used in any trade or business, or for investment
46 purposes, that:



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- A. Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;
- B. Enhance habitability of housing, such as by remedying water, sewage, or sanitation service, safety issues (including, but not limited to, mold remediation), or heating or cooling issues;
- C. Provide basic housing repairs or rehabilitation (including, but not limited to, roof repair and replacement); or
- D. Pay utility bills and charges (including, but not limited to, water, electricity, gas, and basic communications services such as phone, internet, and cable).

ii. Educational Programs. Programs to:

- A. Provide students (including, but not limited to, post-secondary students) transportation to and from school, tutors, and supplies (including, but not limited to, clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities;
- B. Provide tuition payments for students (including, but not limited to, allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education;
- C. Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and
- D. Provide job counseling and programs for which the primary objective is job placement or training, including, but not limited to, allowances for expenses for interviewing or training away from home (including, but not limited to, travel, auto expenses, lodging, and food); tutoring; and appropriate clothing for a job interview or training (including, but not limited to, an interview suit or a uniform required during a period of training).

iii. Elder and Disabled Programs. Programs for individuals who have reached age 60 or are mentally or physically disabled (as defined under applicable law, including, but not limited to, Tribal laws) that provide:

- A. Meals through home-delivered meal programs or at a community center or similar facility;
- B. Home care such as assistance with preparing meals or doing chores, or day care outside the home;
- C. Local transportation assistance; and
- D. Improvements to adapt housing to special needs (including, but not



1 limited to, grab bars and ramps).

2
3 iv. Cultural and Religious Programs. Programs to:

- 4
5 A. Pay expenses (including, but not limited to, admission fees,
6 transportation, food, and lodging) to attend or participate in a cultural,
7 social, religious, or community activities such as ceremonies and
8 cultural activities;
- 9 B. Pay expenses (including, but not limited to, admission fees,
10 transportation, food, and lodging) to visit sites that are culturally or
11 historically significant for the Pueblo, including, but not limited to,
12 those on other Indian reservations;
- 13 C. Pay the costs of receiving instruction about the Pueblo's culture, and
14 history (including, but not limited to, cultural language, music, and
15 dances);
- 16 D. Pay funeral and burial expenses and associated expenses; and
- 17 E. Pay transportation costs and admission fees to attend educational,
18 social, or cultural programs offered or supported by the Pueblo or
19 another Tribe.

20
21 v. Other Qualifying Benefit Programs. Programs to:

- 22
23 A. Pay transportation costs such as rental cars, substantiated mileage, and
24 fares for bus, taxi, and public transportation between an Indian
25 reservation, service area, or service unit area and facilities that provide
26 essential services to the public (such as medical facilities and grocery
27 stores);
- 28 B. Pay for the cost of transportation, temporary meals, and lodging of a
29 Tribal Member while the individual is receiving medical care away
30 from home;
- 31 C. Provide assistance to individuals in exigent circumstances (including,
32 but not limited to, victims of abuse), including, but not limited to, the
33 costs of food, clothing, shelter, transportation, auto repair bills, and
34 similar expenses;
- 35 D. Pay costs for temporary relocation and shelter for individuals
36 displaced from their homes (including, but not limited to, situations in
37 which a home is destroyed by a fire or natural disaster);
- 38 E. Provide assistance for transportation emergencies (for example, when
39 stranded away from home) in the form of transportation costs, a hotel
40 room, and meals; and
- 41 F. Pay the cost of nonprescription drugs
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1 **ARTICLE 60.15 NON SAFE HARBOR PROGRAMS**

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3 Nothing in this Ordinance or the IRS safe harbor guidance shall limit the Pueblo’s right to
4 provide benefits outside of the safe harbor rules. Any changes to the safe harbor programs as a
5 result of the Indian General Welfare Exclusion Act of 2014 shall be immediately incorporated,
6 by reference, into this Ordinance.
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[[Legislative History]]

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This General Welfare Ordinance was adopted in order to respond to the 2020 Coronavirus (COVID-19) that was declared a Public Health Emergency by the World Health Organization (WHO) on January 30, 2020. On March 11, 2020 the WHO characterized COVID-19 as a global pandemic. On March 13, 2020 the Pueblo of Isleta passed Tribal Council Resolution 2020-011 declaring a public health emergency in order to prevent, prepare for, and respond to COVID-19. The federal government, in response to the global pandemic, provided states and tribes with stimulus funds under the CARES Act. Multiple programs were rapidly developed with CARES Act funds to address the crisis, including programs that fall under the general welfare exception.

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