

ORDINANCE OF THE OGLALA SIOUX TRIBAL COUNCIL
OF THE OGLALA SIOUX TRIBE
(AN UNINCORPORATED TRIBE)

ORDINANCE OF THE OGLALA SIOUX TRIBAL COUNCIL OF THE OGLALA SIOUX TRIBE TO PROVIDE ECONOMIC ASSISTANCE TO HOUSEHOLDS SUFFERING FROM NEGATIVE ECONOMIC IMPACTS DUE TO THE COVID-19 PUBLIC HEALTH EMERGENCY.

WHEREAS, the Oglala Sioux Tribe adopted its Constitution and By-Laws by referendum vote on December 14, 1935, in accordance with Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 5123), and under Article III of the Constitution, the Oglala Sioux Tribal Council is the governing body of the Oglala Sioux Tribe, and

WHEREAS, pursuant to the Constitution and By-laws of the Oglala Sioux Tribe, the Oglala Sioux Tribal Council exercises legislative powers to enact and promulgate resolutions and ordinances, and

WHEREAS, Article IV, Sections 1(f), 1(k), 1(m), and 1(w) empower the Tribal Council to manage the economic affairs of the Tribe, protect and preserve the property of the Tribe, adopt laws governing the conduct of persons on the Pine Ridge Indian Reservation, and adopt laws protecting and promoting the health and general welfare of the Oglala Sioux Tribe and its membership, and

WHEREAS, in response to the COVID-19 public health emergency, the federal government enacted the American Rescue Plan ("ARP") Act, Pub. L. 117-2 (Mar. 11, 2021), which established a Coronavirus State Fiscal Recovery Fund ("FRF") to be administered by the U.S. Department of the Treasury, and

WHEREAS, the Tribe has or will receive payments from the FRF, and

WHEREAS, the ARP Act states that a Tribal government may use FRF payments, among other things, "to cover costs incurred by the ... Tribal government, by December 31, 2024 ... to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households," ARP Act § 602(c)(1)(B), and

WHEREAS, the U.S. Department of the Treasury ("Treasury") has issued guidance regarding how Treasury interprets the ARP provisions regarding permissible FRF expenditures, Treasury Department, Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule, 86 Fed. Reg. 26786 (May 17, 2021) (hereafter "Interim Final Rule"), and has further provided Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions (updated June 10, 2021) (hereinafter "FAQ"), and

WHEREAS, Treasury's Interim Final Rule provides that FRF monies may be used to provide "[a]ssistance to households or populations facing negative economic impacts due to COVID-19," including: "Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training," 86 Fed. Reg. at 26794, and

WHEREAS, the Interim Final Rule establishes 31 C.F.R. § 35.6(b)(8) authorizing "[a]ssistance programs, including cash assistance programs, that respond to the COVID-19 public health emergency," 86 Fed. Reg. at 26822; and Treasury's FAQ answers in the affirmative the question of whether recipients of FRF monies may provide "direct cash transfers to households," FAQ at Q. 2.6, and

WHEREAS, the Interim Final Rule states that, "in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic." 86 Fed. Reg. at 26794, and

WHEREAS, the Interim Final Rule further states that: "Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency . . . Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal government in response to the COVID-19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses . . . and could be subject to recoupment," *id.*, and

WHEREAS, the Interim Final Rule further provides that "a recipient could provide survivor's benefits to surviving family members of COVID-19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID-19 victims," *id.*, and

WHEREAS, Treasury's FAQ provides that recipients may use FRF monies to provide assistance to households for "economic harms experienced or costs incurred by the household [due to the COVID-19 public health emergency] prior to March 3, 2021," FAQ at Q. 4.7, and

WHEREAS, on June 10, 2021, the Finance Committee of the Tribal Council recommended adoption of this Ordinance to provide financial assistance to households suffering from negative economic impacts due to the COVID-19 public health emergency, now

THEREFORE BE IT ORDAINED, the Tribal Council hereby adopts the following COVID-19 Financial Assistance to Households Program:

**Oglala Sioux Tribe COVID-19 Household
Economic Assistance Program**

Section 1. Findings

The Oglala Sioux Tribal Council hereby finds and declares as follows:

(a) The Oglala Sioux Tribe ("Tribe") has 45,697 enrolled members, as of February 1, 2021.

(b) A large percentage of the Tribe's enrolled members live on the Pine Ridge Indian Reservation ("Reservation").

(c) The Reservation encompasses over 4,350 square miles of land in southwestern South Dakota and northwestern Nebraska and is one of the largest Indian reservations in the United States.

(d) The Reservation includes all of Oglala Lakota County and Bennett County in South Dakota, the southern half of Jackson County (below the White River) in South Dakota, and a small portion of Sheridan County in Nebraska.

(e) Oglala Lakota, Bennett, and Jackson Counties are among the poorest in the United States, with 2019 poverty rates of 46.2% for Oglala Lakota County, 35.9% for Bennett County, 45.4% for Jackson County, and 45.3% for the Reservation as a whole, compared to 12.3% for the United

States as a whole, according to data from the American Community Survey of the U.S. Census Bureau.

(f) Reservation residents suffer from high rates of unemployment. In 2019, unemployment rates of 63% for Oglala Lakota County, 49% for Bennett County, and 57.4% for Jackson County, compared to 6.1% for the United States as a whole, according to the most recent report by the Bureau of Labor Statistics. The actual unemployment rates on the Reservation are likely much higher because there has historically been undercounting of unemployed and hard-to-reach persons on the Reservation.

(g) Reservation residents suffer from high levels of food insecurity. In 2019, 55% of households in Oglala Lakota County received Food Stamps through the Supplemental Nutrition Assistance Program ("SNAP"), compared to 10.7% for the United States as a whole, according to the Census Bureau. Oglala Lakota County has the highest rate of SNAP benefits usage per capita in the United States, according to the U.S. Department of Agriculture.

(h) Reservation residents suffer from high levels of housing insecurity, including homelessness, overcrowding, and unsafe and uninhabitable housing. According to the Census Bureau, in 2019, 27% of households in Oglala Lakota County resided in mobile homes, and 51% of households had more than 4 residents, while only 25% of households have more than two bedrooms.

(i) Tribal members have suffered significant and disproportionate negative economic and health impacts and other harms due to the COVID-19 public health emergency, including unemployment, increased food and housing insecurity, increased expenses, and loss of income.

(j) Nationwide, American Indians have the highest per capita death rate from COVID-19, according to American Public Media Research Lab, and American Indians have died from COVID-19 at more than twice the rate of white Americans, according to the Centers for Disease Control. On the Pine Ridge Indian Reservation, there have been thousands of COVID-19 cases and over 60 deaths, according to local health agencies.

(k) Tribal members have required and continue to require financial assistance for food, utilities, housing, rent and mortgage payments, home repairs, medical and burial expenses, distance learning and telework expenses, job

training, personal protective equipment and sanitation supplies, and other expenses in response to the COVID-19 public health emergency.

(l) Tribal members have required and continue to require economic assistance to enable them to comply with the Tribe's public health measures, including but not limited to measures relating to sheltering in place, self-quarantining, and social distancing.

(m) The economic assistance authorized by this Ordinance is reasonably proportional to the negative economic and health impacts and other harms tribal member households have faced as a result of the COVID-19 public health emergency.

(n) The economic assistance authorized by this Ordinance is necessary to enable compliance with public health measures in response to COVID-19.

Section 2. Economic Assistance to Households

The Tribe shall provide one-time economic assistance to households by providing payments to enrolled members of the Tribe, utilizing funds from the Tribe's Coronavirus State and Local Fiscal Recovery Fund ("FRF") payment, in the amount of \$2,000 per eligible enrolled tribal member. This economic assistance will be expended only to address needs arising from the COVID-19 public health emergency and its negative economic impacts.

Section 3. Eligibility

(a) General Rule - Assistance Is Based on Economic Harm. The Oglala Sioux Tribe COVID-19 Household Economic Assistance Program shall be open to all enrolled members of the Oglala Sioux Tribe who have experienced a negative economic impact from the COVID-19 public health emergency.

(b) Examples of Economic Harm. The following are examples of negative economic impacts from the COVID-19 public health emergency:

(1) Increased household expenses due to the COVID-19 public health emergency. Examples include, but are not limited to: increased housing expenses to comply with public health measures, like shelter-in-place and self-quarantine, including increased rent, mortgage, or

utility expenses and increased expenses for home repairs and weatherization; increased grocery or food delivery expenses; increased expenses due to sanitizing and personal protective equipment needs; increased child care expenses; increased expenses related to remote learning and telework; increased costs associated with caring for household members with COVID-19; increased costs associated with additional persons living in the household due to the pandemic; and burial expenses for COVID-19-related deaths;

(2) Decreased household income due to the COVID-19 public health emergency;

(3) Persons in the household who are ages 18 and over experienced unemployment during the COVID-19 public health emergency;

(4) Persons in the household experienced food insecurity during the COVID-19 public health emergency;

(5) Persons in the household experienced housing insecurity during the COVID-19 public health emergency; and/or

(6) Persons in household are surviving spouses or dependents of persons who have passed away due to COVID-19.

(c) Presumption of Economic Harm. In assessing whether a tribal member experienced economic harm as a result of the COVID-19 public health emergency, the Tribe will presume that the following tribal members experienced negative economic impacts resulting from the COVID-19 public health emergency:

(1) Persons who live in households that experienced unemployment (among persons ages 18 and over) during the COVID-19 public health emergency;

(2) Persons who live in households that experienced increased food insecurity during the COVID-19 public health emergency;

(3) Persons who live in households that experienced housing insecurity during the COVID-19 public health emergency; and

(4) Persons who live in households that are low- or moderate-income.

(d) Individual Assessment of Economic Harm. For a tribal member whose household did not experience unemployment or increased food or housing insecurity and is not low- or moderate-income, the Tribe will make an individualized assessment of whether the tribal member experienced negative economic impacts resulting from the COVID-19 public health emergency. In most cases, signed certifications made by an applicant under pains and penalties of perjury will be sufficient to enable the Tribe to make the individualized assessment of need. However, the Tribe reserves the right to request additional information and documentation from any applicant, and further, each and every applicant whose adjusted gross income is more than \$75,000 for a single person, \$112,500 for a head of household, or \$150,000 for a married couple will be required to submit additional information and documentation to verify the applicant's claim of negative economic impacts resulting from the COVID-19 public health emergency.

Section 4. Application

To receive one-time financial assistance under this program, an individual must submit a signed "Application and Certification Form," to be provided by the Tribe, and the individual must provide all information requested on the form and certify, subject to pains and penalties of perjury and other applicable punishments under the law, that:

(a) The applicant either:

(1) Is an enrolled member of the Tribe, or

(2) Is filing on behalf of a minor or other dependent of the applicant for which all of the following conditions are true: (1) the minor or other dependent is an enrolled member of the Tribe, (2) the minor or other dependent currently lives in the household of the applicant, (3) the minor or other dependent has lived in the household of the applicant for at least 60 days, (4) the applicant is the legal custodian, legal guardian, or legal conservator of the minor or other dependent, (5) the applicant is the primary caregiver for the minor or other dependent, (6) no other person can claim that he or she is the legal custodian, legal guardian, legal conservator, or primary

caregiver of the minor or other dependent, and (7) the funds received will be used solely for the benefit of the minor or other dependent. The applicant shall be required to submit documentation to verify these facts.

(b) The applicant needs economic assistance due to actual negative economic impacts suffered by the applicant as a result of the COVID-19 public health emergency and such negative economic impacts are in an amount not less than \$2,000;

(c) The applicant is in need of economic assistance as a result of the COVID-19 public health emergency and its negative economic impacts based on one or more of the following:

(1) Increased household expenses due to the COVID-19 pandemic;

(2) Decreased household income due to the COVID-19 pandemic;

(3) Persons in the household who are over age 18 have experienced unemployment during the pandemic and/or are currently unemployed;

(4) Persons in the household have experienced food insecurity during the pandemic;

(5) Persons in the household have experienced housing insecurity during the pandemic;

(6) The household is low- or moderate-income; and/or

(7) Persons in household are surviving spouses or dependents of persons who have passed away due to COVID-19;

(d) The applicant's claim of negative economic impacts from the COVID-19 public health emergency is not based on, and assistance will not be used for, any expense that has been or will be reimbursed under any federal program, any other Tribal program, or insurance;

(e) The applicant has and will retain for a minimum of five (5) years all evidence needed to support the applicant's claim of negative economic impacts from the COVID-19 public

health emergency attested to in the application and will furnish a copy of such evidence to the Tribe upon demand, provided that any applicant whose adjusted gross income is more than \$75,000 for a single person, \$112,500 for a head of household, or \$150,000 for a married couple will be required to furnish such evidence together with the application;

(f) The applicant understands that while this Program is structured with the intent that the assistance be non-taxable to Tribal Members under the Tribal General Welfare Exclusion Act and IRS Revenue Procedure 2014-35, if the Internal Revenue Service deems the assistance taxable, then the Tribal Member and not the Tribe shall be responsible for any taxes, interest, and penalties;

(g) Nothing in this Program shall create any obligation legally enforceable against the Tribe or waive the sovereign immunity of the Tribe or any of its agents or employees; and

(h) The information contained in the application and certification form is true and accurate in all material respects, and the applicant understands that knowingly making a false statement to obtain this one-time financial assistance to households from the Tribe's FRF payment is punishable under the law.

Section 5. Definitions

For purposes of this Ordinance, the following terms shall have the meanings set forth below:

(a) "Dependent" mean a person who relies on another person for support and is legally entitled to support from that person. Examples of dependents include persons subject to legal guardianship and legal conservatorship.

(b) "Enrolled tribal member" means a person who is eligible for enrollment in the Oglala Sioux Tribe and whose application for enrollment has been approved by the Oglala Sioux Tribe and who has been assigned an enrollment number by the Oglala Sioux Tribe.

(c) "Food insecurity" means lack of consistent access to enough food for an active, healthy life.

(d) "Housing insecurity" means lack of security in adequate and affordable housing that is the result of high housing costs relative to income, poor housing quality, poor housing and neighborhood safety, overcrowding, loss of housing, or homelessness.

(e) "Low-income" means income that is less than eighty percent (80%) of South Dakota's statewide median income, which for FY 2021 is \$75,500 for a family of four.

(f) "Low- or moderate-income" means income that is less than one hundred and twenty percent (120%) of South Dakota's statewide median income, which for FY 2021 is \$75,500 for a family of four.

(g) "Minor" shall mean a person under the age of eighteen (18) years.

Section 6. Application Process

(a) Applications will be available beginning on July 6, 2021, and will be available as follows: applications will be available beginning on July 6, 2021, to persons who are enrolled in the Oglala Sioux Tribe and who have been assigned an Oglala Sioux Tribe enrollment number as of July 6, 2021; applications will be available on August 1, 2021, to persons who have pending enrollment applications with the Oglala Sioux Tribe Enrollment Office (hereafter "Enrollment Office") that were filed as of June 1, 2021, and applications will be available on August 15, 2021, to persons who submit enrollment applications to the Enrollment Office after June 1, 2021. For individuals whose enrollment applications have not been approved at the time of application for assistance under this program, the application will not be reviewed or approved unless and until the enrollment application is approved.

(b) All applications must be submitted to the Enrollment Office no later than October 15, 2021. Applications may be submitted by personal delivery to the Enrollment Office at Old Bingo Hall, Highway 18, Pine Ridge, SD 57770, or by U.S. mail, to the Enrollment Office at P.O. Box 2070, Pine Ridge, SD 57770. Applications may also be uploaded to a secure online portal to be established by the Oglala Sioux Tribal Treasurer. Applications will be deemed submitted on the date they are personally delivered to the Enrollment Office or uploaded to the online portal or, if they are mailed, the date they are postmarked.

(c) The Enrollment Office will provide each person who submits an application with a written confirmation of receipt of the application.

(d) Applications shall be reviewed and approved by the Enrollment Office within thirty (30) calendar days after they are received by the Enrollment Office. Applications will be deemed received on the date they are personally delivered to the Enrollment Office or uploaded to the online portal or, if they are mailed, the date they are received in the mail by the Enrollment Office.

(e) The Enrollment Office shall notify the Treasurer of all approved applications and the Enrollment Office shall submit payment vouchers to the Treasurer for all approved applications on a weekly basis.

Section 7. Payment Process

(a) Within fifteen (15) calendar days after the Treasurer has been notified by the Enrollment Office of an approved application and has received a payment voucher from the Enrollment Office, the Treasurer shall make payment to the applicant, by check or money order made payable in the applicant's name, provided that if the application was filed on behalf of a minor or other dependent of the applicant, the check or money order shall be made payable in the name of the minor or dependent and provided to the applicant.

(b) If an applicant submits an application and qualifies for payment, but passes away before distribution of the payment, the payment shall become the property of the estate of the deceased applicant.

Section 8. Denial of Assistance

(a) An applicant whose application is denied by the Enrollment may file a written appeal to the Oglala Sioux Tribe Executive Committee (hereafter "Executive Committee").

(b) The Executive Committee will review and decide the appeal, and the decision of the Executive Committee shall be final.

(c) There shall be no appeal to the Tribal Council, Tribal Court, or any administrative agency. Nothing in this Ordinance waives the sovereign immunity of the Oglala Sioux

Tribe, its programs, departments, agencies, officers, employees, or agents.

Section 9. Regulations

The Tribal Council delegates authority to the Finance Committee of the Tribal Council to adopt reasonable regulations to implement this program consistent with the requirements of this Ordinance and consistent the laws, regulations, and guidance applicable to the Coronavirus State and Local Fiscal Relief Fund.

Section 10. Appropriation of Funds

The Tribal Council hereby appropriates funds for this Program in the amount of \$95,000,000 from the Tribe's Coronavirus State and Local Fiscal Recovery Fund ("FRF") payment.

Section 11. Termination of Program

This program shall automatically end on December 31, 2021, or once the program funds are depleted, whichever date is first, and no payment of assistance shall be made after that date. Any unused funds shall returned to the Tribal Council to be budgeted by the Tribal Council for allowable uses under the laws and regulations applicable to the State and Local Coronavirus Fiscal Relief Fund.

and,

BE IT FURTHER ORDAINED, that this Ordinance shall take effect immediately and shall supersede, repeal, and replace all prior, inconsistent laws of the Oglala Sioux Tribe.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, as the undersigned Secretary of the Oglala Sioux Tribal Council, of the Oglala Sioux Tribe hereby certify that this Ordinance was adopted by a vote of: 18 For; 0 Against; 0 Abstain; and 0 Not Voting; during a SPECIAL SESSION held on the 17TH day of JUNE, 2021.

ORDINANCE NO. 21-32

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Stacy S. Two Lance

STACY TWO LANCE
Secretary
Oglala Sioux Tribe

A-T-T-E-S-T:

Kevin Killer

KEVIN KILLER
President
Oglala Sioux Tribe

