

KICKAPOO

TRADITIONAL
TRIBE OF TEXAS

DEFAMATION ORDINANCE



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SECTION 1: AUTHORITY.

Whereas, the Kickapoo Traditional Tribe of Texas is a federally recognized Indian tribe eligible for all rights and privileges afforded to a federally recognized Indian tribe by the United States government; Whereas, the Traditional Council is the duly elected governing body of the Tribe pursuant to the Tribal Constitution; and Whereas, Article VII, subsection (j), of the Constitution mandates that the Tribal Council safeguard the peace, safety, welfare, and political integrity of the Tribe by enacting appropriate resolutions or ordinances for this purpose. Now, therefore, the Tribal Council hereby enacts this Defamation Ordinance to safeguard the Tribe and its Members.

SECTION 2: PURPOSE.

The purpose of this Ordinance is to identify responsibility for Defamation actions and the level of damages, if any, arising out of such actions.

SECTION 3: ADOPTION.

This Ordinance is adopted by the Tribe pursuant to Resolution 2017-G-025.

SECTION 4: AMENDMENTS; REPEAL; SEVERABILITY.

This Ordinance may be altered, amended, or repealed, and a new ordinance may be adopted, by the vote of the Tribal Council. If any provision of this Ordinance or its application to any Person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 5: DEFINITIONS.

This section shall govern the definitions of words and phrases used within this Ordinance. All words not defined herein shall be used in their ordinary and everyday sense.

- a) “Authority” means the right or power to enforce, rule, or give orders; somebody with official power; power to act on behalf of somebody else; or an official permission to do something.
- b) “Elected Official” means any person who is an official of the Tribe by virtue of a Tribal election.
- c) “Employee” means an individual employed by the Tribe or one of its companies or enterprises.
- d) “Government” means the Tribal Council or any department, division, board, committee, commission, or judicial body of the Tribe.
- e) “Malice” means that a statement was made with the knowledge of its falsity or with reckless disregard of whether it was false or true. Reckless disregard means the person publishing the statement has doubts about the truth of the statement at the time the statement was published.
- f) “Ordinance” means this Defamation Ordinance.

- g) “Person” means any individual, business, corporation, partnership, firm, organization, enterprise, or association.
- h) “Public Officials” or “Public Figures” means politicians and high-ranking Government officers by, through, or as a result of an election or appointment, including the Tribal Council, commissioners, board members, and committee members, as well as Employees who have, or appear to the public to have, substantial responsibility for, or control over, the conduct of Government affairs.
- i) “Traditional Council” or “Tribal Council” means the legislative body of the Tribe, which is composed of five (5) Elected Officials.
- j) “Tribal Court” means the District Court or Supreme Court of the Tribe.
- k) “Tribe” or “Tribal” means the Kickapoo Traditional Tribe of Texas, which is a federally recognized Indian tribe eligible for all rights and privileges afforded to a federally recognized tribe by the United States government.

SECTION 6: WRONGFUL ACTIONS.

“Defamation” shall be any wrongful act or publication or circulation of a false statement or representation made orally or in written or visual form that injures the reputation of a Person, tends to lower him in the estimate of others, or tends to reduce him to ridicule, unjust criticism, dislike, contempt, or hatred. Defamation shall include Libel and Slander.

“Libel” shall be any false written, documentary, or visual statement or representation made by unprivileged publication in writing, printing, picture, sign, effigy, a fixed representation to the eye, or sight sensory media such as television, radio, or internet, or which exposes any Person to public hatred, contempt, ridicule, or obloquy, which tends to deprive that Person of public confidence, or to injure that Person in his occupation, or any malicious publication as aforesaid, designed to blacken or vilify the memory of one who is dead, and tending to scandalize that Person’s surviving relatives or friends.

“Slander” shall be any oral Defamatory statement or representation that is not Libel. Slander:

- a) May be limited to, but not exclusive to, statements that charge any Person with a crime, or with having been indicted, convicted, or punished for a crime;
- b) Imputes to the Person the present existence of an infectious, contagious, or loathsome disease;
- c) Tends directly to injure that Person in respect of their office, profession, trade, or business, either by imputing to the Person general disqualification in those respects that the office or other occupation peculiarly requires, or by imputing something with reference to that Person’s office, profession, trade, or business that has a natural tendency to lessen its profit or prevent the Person from fulfilling their official duties;
- d) Seeks to injure or infer disrespect or creates ill-feeling to the Person within the Tribal community; or
- e) Causes actual damage to the Person by its natural consequences.

SECTION 7: PROOF.

Elements.

The elements of a Defamation claim, be it Libel or Slander, are as follows:

- 1) The defendant published a false statement;
- 2) about the plaintiff;
- 3) to a third party; and
- 4) the falsity of the statement caused injury to the plaintiff.

Malice and Negligence.

A private figure plaintiff bringing a Defamation lawsuit must prove that the defendant was at least negligent with respect to the truth or falsity of the allegedly defamatory statement. Public Figures must prove that the defendant acted with Malice (i.e., knowing that the statement was false or recklessly disregarding its falsity).

SECTION 8: DEFENSES.

As a defense to a Defamation suit, the defendant may:

- a) deny and offer evidence to disprove the charges made;
- b) prove that the matter charged as defamatory was true;
- c) show that the defamatory statement was merely an opinion; or
- d) offer evidence that the defamatory statement was published or spoken under such circumstances as to render it a privileged communication.

Also, as a defense in an action for damages for the publication of a Libel in a newspaper, pamphlet, flyer, or similar print media, the defendant may provide evidence to show that the article was published in good faith and that its falsity was due to an honest mistake-of-fact; provided, however, the question of "honest mistake-of-fact" shall be a question of fact to be determined by a jury or a judge in the absence of a jury.

SECTION 9: PRIVILEGED COMMUNICATIONS - EXEMPTION FROM DEFAMATION.

A privileged publication or communication is one made:

- a) In any public legislative or judicial proceeding or any other proceeding authorized by Tribal law;
- b) In the proper discharge of an official duty; or
- c) By a fair and true report of any legislative or judicial or other proceeding authorized by Tribal law, or anything said in the course thereof, and any and all expressions of opinion in regard thereto, and criticisms thereon, and any and all criticisms upon the official acts

of any and all Public Officials, except where the matter stated of and concerning the official act done, or of the Public Official, falsely imputes crime to the Public Official so criticized.

No publication or communication which under this Section 9 would be privileged shall be punishable as Defamation.

SECTION 10: LIMITED PRIVILEGED COMMUNICATIONS.

Defamatory statements made by candidates for public office shall be granted a limited privilege of publication or communication so as not to:

- a) Impede, hinder, or chill the political debate during a campaign, as such comments or publications are related to the campaign; or
- b) Deter a statement by a candidate where such statement would be reasonable during a political campaign.

Determinations of a limited privilege of publication or communication shall be a question of fact for the jury, and if no jury, for the judge. Factors to be considered shall be as follows:

- i) The office that the candidate sought as related to the statement or publication;
- ii) The defamatory nature of the statement; and
- iii) The time and place of the statement or the distribution of the materials that included the statement.

The results of an election shall not be a factor in determining the extent of injury from a defamatory statement.

SECTION 11: DAMAGES.

In any action based on Defamation the plaintiff is entitled to (1) seek temporary and permanent injunctions on such terms as the court deems reasonable to prevent or restrain a violation of this Ordinance and (2) recover only for the actual damages, up to ten thousand dollars (\$10,000) per claim, which he or she has suffered in respect to his or her property, business, trade, profession, occupation, or feelings.

- a) Exemplary and punitive damages shall be recoverable in actions for Libel at the discretion of the court if the plaintiff, before instituting his or her action, gives notice to the defendant to publish a retraction and allows a reasonable time to do so; provided further, proof of the publication or correction shall be admissible in evidence under a denial on the question of the good faith of the defendant, and in mitigation and reduction of exemplary or punitive damages.
- b) For Libel based on a radio or television broadcast, the retraction shall be made in the same manner and at the same time of the day as the original Libel; for Libel based on a publication, the retraction shall be published in the same size type, in the same editions,

and as far as practicable, in substantially the same position as the original Libel; and for other Libel, the retraction shall be published or communicated in substantially the same manner as the original Libel.

SECTION 12: LIMITATIONS PERIOD.

A Person must bring suit for Defamation not later than one (1) year after the day the cause of action accrues.