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Title 47.
Libel and Slander Ordinance

Shoalwater Bay Indian Tribe

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47.01 PURPOSE AND FINDINGS

SBTC 47.01.01. Purpose.

The purpose of this Libel and Slander Ordinance is to:

1. Provide a mechanism to protect persons under the Tribe's jurisdiction from untrue and defamatory statements made against them, including both libel and slander.
2. Establish a clear and consistent process to identify legal responsibility for untrue and defamatory statements and appropriate injunctive relief and damages arising out of such statements.
3. Designate a tribal forum to adjudicate claims concerning untrue and defamatory statements made against persons under the Tribe's jurisdiction.

SBTC 47.01.02. Findings.

In enacting this Ordinance, the Tribal Council makes the following findings:

1. The Tribal Council has the authority to enact ordinances and laws governing the conduct of all persons under the Tribe's jurisdiction, which conduct includes defamation. Constitution of the Shoalwater Bay Indian Tribe, art. VI, § 1(f).
2. Tribal members and other persons under the Tribe's jurisdiction have the right to freedom of speech and the press and the right to petition for a redress of related grievances.
3. Untrue and defamatory statements have the potential to be damaging and harmful to a person's reputation.
4. There is a compelling need for the Tribe to accommodate an appropriate balance between untrue and defamatory statements made against tribal members and other persons under the Tribe's jurisdiction and the freedoms of speech and press.
5. A tribal forum is necessary to allow tribal members and other persons under the Tribe's jurisdiction to seek redress and recover damages for instances where untrue and defamatory statements are made against them.

47.02 DEFINITIONS

SBTC 47.02.01. Defamatory statement.

"Defamatory statement" means a statement that tends to harm a person's reputation to the extent that it lowers the status of that person in the eyes of the community or deters others from associating or dealing with that person.

SBTC 47.02.05. Harassment.

“Harassment” means a defamatory statement made with knowledge that it was false or with reckless disregard of whether or not it was false, or a statement made to harass, harm, or prevent a person or Tribal Official from carrying out his or her duties.

SBTC 47.02.10. Oral defamatory statement.

“Oral defamatory statement” means an unprivileged, false, and defamatory statement made orally in person, by radio or television, or by any other means.

SBTC 47.02.15. Ordinance.

“Ordinance” means this Defamation Ordinance.

SBTC 47.02.20. Person.

“Person” means any individual person, business, corporation, partnership, organization, enterprise, or association.

SBTC 47.02.25. Public Official.

“Public Official” means a person who is elected to the Tribal Council, serves on a board, committee, or commission of the Tribe, or is a representative of the Tribe selected or appointed to act in a position. A Public Official also includes employees of the Tribe who perform governmental functions on behalf of the Tribe.

SBTC 47.02.30. Publication.

“Publication” means the communication of an oral or written defamatory statement to someone other than the person who is defamed. The publication of a written defamatory statement can be effected by any means, including social media and online forums or any other means of publishing or sharing statements, so long as the publication is to someone other than the person who is defamed.

SBTC 47.02.35. Special damages.

“Special damages” mean damages suffered with respect to a plaintiff’s property, business, trade, profession or occupation, including such amounts of money as the plaintiff alleges and proves he or she has expended as a result of the alleged libel or slander.

SBTC 47.02.40. Tribal Council.

“Tribal Council” means the Shoalwater Bay Indian Tribal Council.

SBTC 47.02.45. Tribal Court.

“Tribal Court” means the Shoalwater Tribal Court.

SBTC 47.02.50. Tribal law.

“Tribal law” means the duly enacted laws of the Shoalwater Bay Indian Tribe.

SBTC 47.02.55. Tribe.

“Tribe” means the Shoalwater Bay Indian Tribe.

SBTC 47.02.60. Written defamatory statement.

“Written defamatory statement” means an unprivileged, false, and defamatory statement made by writing, printing, picture, or other fixed representation. A written defamatory statement can include posts on social media and online forums or any other means of communicating or sharing statements.

47.03. CLAIMS, DEFENSES, AND OTHER PROVISIONS

SBTC 47.03.01. Libel and Slander.

Under this Ordinance, there are two types of defamation: (a) libel, or (b) slander.

1. Libel. A claim for libel requires the plaintiff to establish the following: (1) a written defamatory statement concerning the plaintiff, (2) that is false, (3) non-privileged, (4) communicated to a third party, and (5) has a natural tendency to injure or which causes special damages.

2. Slander. A claim for slander requires the plaintiff to establish the following: (1) an oral defamatory statement concerning the plaintiff, (2) that is false, (3) non-privileged, (4) communicated to a third party, and (5) has a natural tendency to injure or which causes special damages.

SBTC 47.03.05. Claims by Public Officials.

Public Officials of the Tribe may, without waiving their own, or the Tribe’s, sovereign immunity, bring an action in Tribal Court to enjoin, prevent, or seek redress from the defamatory statements of a person. A plaintiff who is a Public Official must show by clear and convincing a preponderance of the evidence that the defendant made the defamatory statement with the intent of harassment as defined in Section 2.

SBTC 47.03.10. Defenses.

In an action involving libel or slander, the defendant may present evidence showing:

1. The alleged defamatory statement is true;
2. The alleged defamatory statement is merely an opinion; or
3. The alleged defamatory statement was communicated orally or in writing under such circumstances as to render it a privileged communication.

In an action for libel in a newspaper, pamphlet, flyer, or similar print or online media, the defendant may provide evidence to show that the article or posting was published in good faith and that its falsity was due to an honest mistake-in-fact; provided, however, that the question of “honest mistake-of-fact” shall be a question of fact to be determined by a judge in the absence of a jury.

The determination of whether an alleged defamatory statement is a fact or opinion shall be based on the totality of the circumstances, including but not limited to, the context in which the

statement is made or published, the specificity of the statement, the tone of the statement, and whether the speaker of the statement is shown to be unbiased or to possess specialized or first-hand knowledge.

In an action for libel or slander, when the defendant cannot establish a defense, he or she may offer evidence, as allowed by law, to establish mitigating circumstances, including evidence showing the sources of his or her information and the grounds for his or her belief that the information was true.

SBTC 47.03.15. Privileged Communications.

A privileged communication is one made, without harassment:

1. In the proper discharge of an official duty;
2. In any legislative, judicial, or other proceeding authorized by tribal law;
3. To a person interested therein by one who also is interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication was innocent, or who is requested by the person interested to give the information; or
4. In presenting a fair and true report of a legislative, judicial, or other public proceeding authorized by tribal law, or of anything said in the course of such proceeding.

No publication or communication which under this Section 6 would be privileged shall be punishable as libel or slander.

SBTC 47.03.20. Damages Authorized.

If the Tribal Court determines that a plaintiff is entitled to damages for a libel or slander claim, the Court may award the plaintiff:

1. An injunction on such terms the Tribal Court deems reasonable to prevent or restrain a violation of this Ordinance;
2. Recovery of general damages for loss or reputation, shame, mortification, and hurt feelings; and
3. Special damages that the plaintiff alleges and proves that he or she has suffered in respect to his or her property, business, trade, profession, capacity to carry out official duties, or occupation, including the amounts of money the plaintiff alleges and proves he or she has expended as a result of the alleged defamation.

In determining the appropriate level of damages for a plaintiff, the Tribal Court may consider whether the defamatory statement(s) is part of a pattern or practice of untrue and defamatory statements made by the defendant against the plaintiff.

SBTC 47.03.25. Tribal Forum.

Any claim for libel or slander brought under this Ordinance shall be commenced in Tribal Court.

SBTC 47.03.30. Statute of Limitations.

Any claim for libel or slander shall be commenced within one (1) year after the cause of action accrues. The cause of action is deemed to accrue when the plaintiff discovers, or in the reasonable exercise of diligence should discover, the elements of the cause of action.

47.04. MISCELLANEOUS PROVISIONS

SBTC 47.04.01. Severability.

If any provision of this Ordinance is declared to be invalid by the Tribal Court, the remainder of the Ordinance shall not be affected and shall remain in full force and effect.

SBTC 47.04.05. Amendment.

This Ordinance may be amended in accordance with applicable tribal law.

SBTC 47.04.10. Effective Date.

This Ordinance shall be effective upon the date of adoption by resolution of the Tribal Council.