# THE PAIUTE INDIAN TRIBE OF UTAH

440 North Paiute Drive • Cedar City, Utah 84721 • (435) 586-1112


**RESOLUTION NO. 2019-38**

## PAIUTE INDIAN TRIBE OF UTAH TRIBAL COUNCIL RESOLUTION TO SET HEARING FOR LORA TOM

**WHEREAS,** the Paiute Indian Tribe of Utah ("Tribe") is a federally recognized Indian tribe under 25 U.S.C. § 761, et seq., organized under the Tribe's Constitution, as ratified by the Tribe on June 11, 1991, and approved by the Secretary of the Interior on July 15, 1991, and amended by the Tribe on August 12, 1997, and approved by the Secretary of the Interior on September 30, 1997, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); and

**WHEREAS,** pursuant to Article IV and Article V of the Constitution of the Paiute Indian Tribe of Utah, the Tribal Council is the official governing body of the Tribe; and

**WHEREAS,** pursuant to Article V, Section 1 of the Constitution of the Paiute Indian Tribe of Utah, the Tribal Council is vested with all executive and legislative powers of the Tribe; and

**WHEREAS,** pursuant to its inherent sovereignty as an Indian Tribe and Article V, Section 1 of the Constitution of the Paiute Indian Tribe of Utah, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and,

**WHEREAS,** Paiute Indian Tribe of Utah Ordinance 2009-1 Section 6 entitled "Tribal Council Standards of Conduct" provides for standards of conduct to which the Tribal Council must conform; and

**WHEREAS,** the Tribal Council Standards of Conduct Section 6 "Procedure to Investigate Tribal Council Members" provides that the Tribal Council may waive an investigation of violations of the Standards of Conduct by Tribal Council members; and

**WHEREAS,** the Tribal Council has received a complaint against Tribal Council Member Lora Tom, attached to this Resolution as Exhibit A; and

**WHEREAS,** the Tribal Council met in executive session on April 16, 2019 and reviewed the complaint against Lora Tom.

**NOW THEREFORE BE IT RESOLVED,** that the Tribal Council by this Resolution has determined that the allegations within the complaint fall within the scope of the Tribal Council Standards of Conduct Ordinance, and that, if those alleged facts are true, they would support a determination of unethical and / or improper conduct; and

**BE IT FURTHER RESOLVED** that the Tribal Council hereby waives the investigation of Lora Tom pursuant to the Standards of Conduct Section 6(B)(5); and

**BE IT FURTHER RESOLVED**, this Tribal Council will meet on May 1, 2019 in [open meeting or executive session] to hear the charges against Lora Tom and reach a final determination on the allegations and decide by motion what sanction to impose.

## CERTIFICATION

I hereby certify that the foregoing Resolution was fully considered by the Tribal Council at a duly called meeting in Cedar City, Utah, at which a quorum was present and that the same was passed by a vote of 2 in favor, 1 opposed, 1 abstained, and 1 absent this 1st day of May, 2019.

Tamra Borchardt-Slayton, Chairperson

ATTEST:

Carol Garcia, Tribal Council Secretary

The Paiute Indian Tribe of Utah
440 N Paiute Drive
Cedar City, UT 84721

THE PAIUTE INDIAN TRIBE OF UTAH TRIBAL COUNCIL

Complainant,

vs.
LORA TOM,
Interim -Tribal Council Member

Respondent

**COMPLAINT FOR REMOVAL**

Case No.: 2019-38

Judge: Judge Reynolds

## COMPLAINT FOR REMOVAL

The PAIUTE INDIAN TRIBE OF UTAH TRIBAL COUNCIL brings this action under the Paiute Indian Tribe of Utah Constitution, Tribal Council Standards of Conduct, ORDINANCE 2009-01, Tribal Council Rules of Procedure, The Paiute Indian Tribe of Utah Confidentiality Agreement, and The Paiute Indian Tribe of Utah Ethics Ordinance. The Tribal Council brings this matter because the Respondent has continued to violate Tribal Laws that are enacted to ensure the Respondent acts within their duty of loyalty and good faith as a Tribal Council Member.

## PARTIES, JURISDICTION, AND VENUE

1. Complainant, the PAIUTE INDIAN TRIBE OF UTAH is a federally recognized tribe. Complainant's reservation is located in Iron County, Utah.

2. The Respondent, LORA TOM, is an Interim-Tribal Council Member, whose seat was created by the resignation of Travis Parashonts of the Cedar Band of Paiutes. The Cedar Band of Paiutes is one of the federally recognized bands comprising the Paiute Indian Tribe of Utah, a federally recognized tribe.

3. This complaint is brought against Respondent in their official capacity, and for official actions taken, as the governing body of the Paiute Indian Tribe of Utah, and not in their personal capacity.

4. The incidents, acts, and omissions giving rise to this Complaint occurred in Iron County, Utah.

5. The Tribal Council has jurisdiction over the parties and the subject matter hereof and venue is proper.

## GENERAL ALLEGATIONS

1. The Paiute Indian Tribe of Utah ("PITU") is a federally recognized tribe with federal trust lands located in Iron, Kanosh, Beaver, Sevier, and Washington counties. The Koosharem, Kanosh, Indian Peaks, and Shivwits federal status was terminated in 1954, and the Paiute people lost a majority of their land base and suffered dire socioeconomic conditions. In 1980, the United States Congress passed legislation that restored the PITU's status as a federally recognized tribe. The PITU administrative office is located in Cedar City, Utah. The current PITU governing body is the PITU Tribal Council.

2. The Paiute Indian Tribe of Utah ("Tribe") is a federally recognized Indian tribe under 25

U.S.C. § 761, *et seq*., organized under the Tribe's Constitution, as ratified by the Tribe on June 11, 1991, and approved by the Secretary of the Interior on July 15, 1991, and amended by the Tribe on August 12, 1997, and approved by the Secretary of the Interior on September 30, 1997, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

3. Pursuant to Article IV and Article V of the Constitution of the Paiute Indian Tribe of Utah, the Tribal Council is the official governing body of the Tribe and is vested with all executive and legislative powers of the Tribe.

4. The Tribal Council Rules of Procedure was adopted by previous tribal councils and utilized by the current Tribal Council, with amendments taking place on September 12, 2018 by majority vote.

5. The Paiute Indian Tribe of Utah Tribal Council Standards of Conduct was passed by Ordinance 2009-01, by majority vote on June 3, 2009.

6. The Paiute Indian Tribe of Utah Ethics Ordinance was approved May 5, 1984 and last amended April 5, 2004, by majority vote.

7. The Paiute Indian Tribe of Utah Confidentiality Agreement is a standard agreement that has been adopted by previous Tribal Councils and utilized by this current Tribal Council.

8. The Paiute Indian Tribe of Utah Election Ordinance was passed on May 5, 2015 by majority vote of the Tribal Council.

**FIRST CAUSE OF ACTION**
**Tribal Council Standards of Conduct**
**The Paiute Indian Tribe of Utah Constitution**
**Election Ordinance**
January 17, 2019 Meeting

1. The Respondent violated the Tribal Council Standards of Conduct, Section 5 "Prohibition on Improper Conduct," when Respondent, with the help of outside legal counsel, approved by motion to refrain from taking any action regarding band elections if a band so requests and that band has by-laws in place with provisions about how to fill a vacancy.

2. The Cedar Band and Shivwits Band Tribal Council Seats became vacant in January of 2019. During the January 17, 2019 meeting and following the meeting the Shivwits Band had their attorney send a letter dated January 23, 2019 stating they would be following their own by-laws that are in direct violate tribal law.

3. The Memorandum of Motion and the Respondent's actions related to that action directly violated the Paiute Indian Tribe of Utah Constitution, Article XXII – Recall, Removal, and Forfeiture, Section 3, which provides for a specific procedure to fill a vacancy created by forfeiture, and Article VIII, Section 3, which provides that the band councils "shall take no action which is inconsistent with the constitution, or ordinances or resolutions of the tribe." The motion made to supersede the Election Ordinance, which outlines the process to fill a Tribal Council vacancy, violated the Constitution and therefore the Tribal Council Standards of Conduct's prohibition of "Violating the Tribe's laws' and Ordinances, resolutions, rules, regulations, or policies. " *Id.* at § 5(H).

**SECOND CAUSE OF ACTION**
**Tribal Council Standards of Conduct**
**The Paiute Indian Tribe of Utah Restoration Act**
**The Paiute Indian Tribe of Utah Constitution**
March 11, 2019 Meeting
Background Checks for Tribal Council Members Resolution

1. Respondent violated the Tribal Council Standards of Conduct Section 5(H) prohibition of "Violating the Tribe's laws' and Ordinances, resolutions, rules, regulations, or policies" by inserting the phrase in the resolution entitled "Background Checks for Tribal Members" that "federally-recognized status of the five Bands of the Paiute Indians in Utah was restored or reaffirmed on April 3, 1980…" This statement is misleading and does not represent the views of the United States of America, which recognizes the Tribe as the federally recognized entity in the Paiute Indian Tribe of Utah Restoration Act and not the bands. Further, the Tribe is listed in the Federal Register of the Department of the Interior Bureau of Indian Affairs, Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 FR 435. The Respondent knowingly allowed outside legal counsel to write a resolution that diminishes the tribe's authority, which is in violation of Tribal Law.

2. The Respondent violated the Tribal Council Standards of Conduct Section 4(G) ("Council Members shall not knowingly make public any confidential information received in connection with one's duties as a Council Member, including but not limited to . . . (3) Information given to a tribal official or employee with the reasonable expectation that such information would be kept confidential") when the Respondent knowingly provided outside legal counsel privilege and confidential information regarding background checks. The legal counsel acknowledged that he received copies of privilege and confidential information from the Respondent during the March 11, 2019 Open Meeting.

3. The Respondent violated the Tribal Council Standards of Conduct Section 5(H)(" Violating the Tribe's laws', Ordinances, resolutions, rules, regulations or policies"). The Respondent knew that The Paiute Indian Tribe of Utah Constitution, Article XIV Elections, Section 6

and Section 12 of the Election Ordinance provides for certifications of candidates for office by a Tribal election board. The Respondent knowingly misleads and broke Tribal Law by allowing a resolution to state: "BE IT FURTHER RESOLVED: that any resolutions of the council to the contrary are hereby superseded."

**THIRD CAUSE OF ACTION**
**Tribal Council Standards of Conduct**
**The Paiute Indian Tribe of Utah Restoration Act**
**The Paiute Indian Tribe of Utah Constitution**
March 11, 2019 Meeting
Amendment of Legal Counsel Engagement and Directive

1. Respondent violated the Tribal Council Standards of Conduct Section 5(H) prohibition of "Violating the Tribe's laws' and Ordinances, resolutions, rules, regulations, or policies" by inserting the phrase in the resolution entitled "Amendment of Legal Counsel Engagement and Directive" that "federally-recognized status of the five Bands of the Paiute Indians in Utah was restored or reaffirmed on April 3, 1980…" This statement is misleading and does not represent the views of the United States of America, which recognizes the Tribe as the federally recognized entity in the Paiute Indian Tribe of Utah Restoration Act and not the bands. Further, the Tribe is listed in the Federal Register of the Department of the Interior Bureau of Indian Affairs, Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 FR 435. The Respondent knowingly allowed outside legal counsel to write a resolution that diminishes the tribe's authority, which is in violation of Tribal Law.
2. Respondent violated the Tribal Council Standards of Conduct Section 4(G) ("Council Member shall not knowingly make public any confidential information received in

connection with one's duties as a Council Member, including but not limited to: (3) Information given to a tribal official or employee with the reasonable expectation that such information would be kept confidential.") when the Respondent knowingly provided outside legal counsel privileged and confidential information regarding discussions that took place in closed/executive sessions and emails from the Tribes' legal counsel. By having outside legal counsel write Resolution Amendment of Legal Counsel Engagement and Directive Process. The process into itself is questionable, due to the fact that this document is amending a document that doesn't exist. Prior legal counsel and tribal council wrote how to contact the Tribe's legal counsel to keep cost down, but it was not dated or signed, and the validity of the document is questionable and was written for that specific attorney.

3. Respondent violated the Tribal Council Standards of Conduct Section 4(H)(" Council Member shall maintain a workplace free of discrimination, harassment, violence, and intimidation, and that is drug-free, as required by law. Tribal Government officials, including Council Members, shall not tolerate any form of threatening or abusive behavior under the Tribe's Zero-Tolerance Policy. ") The resolution entitled "Amendment of Legal Counsel Engagement and Directive" states: "WHERE AS: It has come to the attention of Tribal Council Members that the Chairperson has directed legal counsel for the Tribe contrary to Tribal law and Tribal interests, without authorization of Tribal Council, as required by the Constitution, Tribal Council Rules of Procedure and Tribal Council Standards of Conduct." The Respondent knew the statement was misleading and the Chairperson's conduct does not violate Tribal Law and there are currently no restrictions on how the Tribal Chairperson is allowed to discuss issues with the Tribe's legal counsel. The documents cited have no validity because they do not mention how to contact legal counsel and the statement made

can be viewed threatening and intimidating and creates substantial harm to the professional character of the Tribal Chairperson and tribal legal counsel. The Tribal Council is aware of all contact with legal services and does review and approve legal invoices that detail what was discussed and who it was discussed with, every month.

**FOURTH CAUSE OF ACTION**
**Tribal Council Standards of Conduct**
**The Paiute Indian Tribe of Utah Restoration Act**
**The Paiute Indian Tribe of Utah Constitution**
**Tribal Council Rules and Procedure**
March 11, 2019 Meeting
Recognition of Complaint and Investigation of Tribal Chairperson

1. Respondent violated the Tribal Council Standards of Conduct Section 5(H) prohibition of "Violating the Tribe's laws' and Ordinances, resolutions, rules, regulations, or policies" by inserting the phrase in the resolution entitled "Recognition of Complaint and Investigation of Tribal Chairperson" that "federally-recognized status of the five Bands of the Paiute Indians in Utah was restored or reaffirmed on April 3, 1980…" This statement is misleading and does not represent the views of the United States of America, which recognizes the Tribe as the federally recognized entity in the Paiute Indian Tribe of Utah Restoration Act and not the bands. Further, the Tribe is listed in the Federal Register of the Department of the Interior Bureau of Indian Affairs, Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 FR 435. The Respondent knowingly allowed outside legal counsel to write a resolution that diminishes the tribe's authority, which is in violation of Tribal Law.

2. Respondent violated the Tribal Council Standards of Conduct Section 6("Procedure to Investigate Tribal Council Members") when the Respondent knowingly discarded the Tribal

Council Standards of Conduct Section 6 and did not provide the required initial review in an executive session. If an executive session was held without the knowledge of all the Tribal Council members, such meeting knowingly violated Tribal Council Rules and Procedure Section I(4) ("Any business which may lawfully come before a regular meeting may be transacted at a special meeting if all the members of the Council present consent thereto and all the members absent file their written consent.") The Respondent knowingly broke Tribal Law by not following the outlined process, not having an executive meeting, violating tribal law and violating the due process of the Tribal Chairperson.

3. The resolution entitled "Recognition of Complaint and Investigation of Tribal Chairperson" required the Chairperson to disclose all her emails and directed the Tribal IT department "to obtain such correspondence directly from the Chairperson's computer to ensure that no evidence is spoiled, for immediate distribution to each member of the Tribal Council." The language cited above are inconsistent with Tribal Council Standards of Conduct and do not follow the process that is outlined and is in direct violation of tribal law.

4. The Paiute Indian Tribe of Utah Constitution Article IV-Tribal Council Section 1(f) provides that "In the event a Council Member is unable to attend a council meeting, the Vice-Chairperson of the affected band may attend, be counted for purposes of forming a quorum and voting, Provided, that the band chairperson has designated in advance in writing that the vice-chairperson is acting as his or her representative at said meeting. This resolution shall not constitute an exception to Article XII- Recall, Removal and Forfeiture as found in this constitution."

5. The vote that took place violated Tribal Law because each person that voted was a Vice-Chairperson of a band.

**FIFTH CAUSE OF ACTION**
**Tribal Council Standards of Conduct**
**The Paiute Indian Tribe of Utah Restoration Act**
**The Paiute Indian Tribe of Utah Constitution**
March 11, 2019 Meeting
Approval of Written Notice of Removal and Setting of Removal Hearing Under the Constitution Article XII, Section 2

1. Respondent violated the Tribal Council Standards of Conduct Section 5(H) prohibition of "Violating the Tribe's laws' and Ordinances, resolutions, rules, regulations, or policies" by inserting the phrase in the resolution entitled "Recognition of Complaint and Investigation of Tribal Chairperson" that "federally-recognized status of the five Bands of the Paiute Indians in Utah was restored or reaffirmed on April 3, 1980…" This statement is misleading and does not represent the views of the United States of America, which recognizes the Tribe as the federally recognized entity in the Paiute Indian Tribe of Utah Restoration Act and not the bands. Further, the Tribe is listed in the Federal Register of the Department of the Interior Bureau of Indian Affairs, Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 FR 435. The Respondent knowingly allowed outside legal counsel to write a resolution that diminishes the tribe's authority, which is in violation of Tribal Law.

2. Respondent violated the Tribal Council Standards of Conduct Section 5(H) prohibition of "Violating the Tribe's laws' and Ordinances, resolutions, rules, regulations, or policies" by disregarding Tribal Council Standards of Conduct Section 6("Procedure to Investigate Tribal Council Member"). The Respondent did not follow the process outlined in tribal law. The Respondent is making a mockery of the process and attempted to supersede the Respondents authority by maneuvering an illegal move in a public meeting to diminish the character of the

Tribal Chairperson and not affording the Tribal Chairperson their due process, which is a violation of Tribal Law.

**SIXTH CAUSE OF ACTION**
**Tribal Council Standards of Conduct**
March 11, 2019 Meeting

1. Respondent violated the Tribal Council Standards of Conduct Section 2("Council Members shall maintain the highest standards of honesty, integrity, fairness, and impartiality in their conduct as Council Members, and shall avoid any action which would adversely reflect on the Tribal Council or the Tribe. Council members shall take action in the best interests of the Tribe and the Tribal Membership, not in their personal interest and not serve special interests inside or outside of the Tribe. Although Council Members are elected to represent the five constituent bands, Council Members are expected to act in the best interest of the Tribe as a whole, and to represent the interests of all the Bands equitably. Council Members shall carry out their duties and responsibilities in the highest ethical manner. Violation of this Ordinance may constitute "neglect of duty" or "willful misconduct" as those terms are used in Article XII, Section 2 of the Constitution.")

2. The Respondent made it apparent based on what transpired in the open meeting that they violated Tribal Law by passing illegal resolutions and suspending the chairperson without following the Tribal Council Standards of Conduct.

**SEVENTH CAUSE OF ACTION**
**Tribal Council Standards of Conduct**
**The Paiute Indian Tribe of Utah Constitution**
**Tribal Council Rules and Procedure**
Cedar Band Nomination Meeting
January 2018

1. Tribal Council Standards of Conduct Section 4 Ethical Obligation (B) A council member

shall not take any official action, whether in the Tribal Council meeting, committee meeting or otherwise, in which the Council Member, or a member of his or her immediate family, has personal or financial interest which could be affected by such action. Tribal Council Standards of Conduct Section 4. Ethical Obligation (H) Council members shall maintain a workplace free of discrimination, harassment, violence and intimidation, and that is drug-free, as required by law. Tribal government officials, including Council Members, shall not tolerate any form of threatening or abusive behavior under the Tribe's zero-tolerance policy.

2. Defendant knowingly interfered with the election process that is outlined in the Paiute Indian Tribe of Utah Constitution and Election Ordinance. Defendant on the premises of the Paiute Indian Tribe of Utah headquarters, threatened, intimidated, and coerced the audience and election board.

## REQUEST

1. Based on the information provided in an open meeting, the Complainant requests that the Tribal Council not conduct any further investigation and proceed directly to a hearing pursuant to Tribal Council Standards of Conduct Section 6(B)(5)(" If the Tribal Council does not request an independent investigation, then the Chairperson shall have a hearing date not less than ten and not more than 45 days from the date of the initial review period").
2. **Complainant requests that the hearing conducted by Tribal Council be held in an open** meeting as now that precedent has been set.