

**KASHIA BAND OF POMO INDIANS
OF THE STEWARTS POINT RANCHERIA**

**ORDINANCE NO. 12
CONSUMER FINANCE BUSINESS REGULATION**

(Approved by General Council 8/10/13; Revised by General Council 8/8/15, 8/11/18, 9/21/19)

I. INTRODUCTORY PROVISIONS

- A. Authority. This Ordinance is adopted under the inherent sovereign authority of the Kashia Band of Pomo Indians and in accordance with Article 5, Section 1(i), (o) and (p) and Article 6, Section 2 of the Kashia Band's Constitution.
- B. Tribal Policies. The Kashia Band of Pomo Indians, through its General Council, declares that it is the policy and intent of the Tribe to:
1. Preserve and enhance the quality of life, well-being and economic circumstances of the Tribal Community by providing basic services and assistance, job and training opportunities to Tribal Members, protecting and managing Tribal lands and resources, and performing other essential governmental functions; and
 2. Exercise its sovereignty and powers of self-government by establishing and operating Tribal Businesses for the benefit of the Tribe and its members and by regulating those businesses to ensure compliance with Tribal and federal consumer financial protection laws.
- C. Purposes. The purposes of this Ordinance are to implement the Tribal Policies described above by:
1. Authorizing the Tribal Council to establish and operate one or more consumer lending or related businesses pursuant to the sovereign authority of the Kashia Band of Pomo Indians; and
 2. Defining basic requirements and limitations applicable to Tribal Business activities and establishing an agency of Tribal Government responsible to license and regulate such businesses to ensure their proper operation.

II. AUTHORIZATION TO ESTABLISH AND OPERATE CONSUMER LENDING AND RELATED BUSINESSES

- A. Tribally Owned Businesses. The General Council hereby confirms that Tribal Council is authorized to establish one or more wholly owned Tribal entities to develop, operate and manage consumer lending and related business(es) (collectively, along

with any subsidiaries thereof, "Tribal Businesses") pursuant to the sovereign authority of the Kashia Band of Pomo Indians. Such business operations shall constitute lawful activities of the Tribe provided that:

1. Each Tribal Business is established in accordance with Tribal law and licensed in accordance with the provisions of this Ordinance; and
2. Each Tribal Business operates at all times in compliance with all Tribal and applicable federal consumer financial protection laws; and
3. The income generated by each Tribal Business supports Tribal Government functions that benefit the Tribal community.

B. Authorized Business Activities. The business operations authorized by this Ordinance include consumer lending and related activities such as platform financing, lead aggregation, and the provision of other services that support consumer lending business operations.

III. KASHIA LENDING COMMISSION

A. Establishment; Purpose. The General Council hereby establishes the Kashia Lending Commission as a subdivision of the Tribal Government authorized and directed to implement the provisions of this Ordinance.

B. Attributes. The Kashia Lending Commission shall function as an arm of the Tribal Government. As such, it shall possess all privileges and immunities of the Tribe.

C. Duties and Authorities. The Kashia Lending Commission, through its Commissioner(s), is responsible and authorized to perform the following governmental functions:

1. Implement and enforce all aspects of this Ordinance;
2. Establish and furnish one or more offices as necessary and appropriate to conduct the governmental functions of the Commission;
3. Acquire and hold assets, establish one or more bank accounts in the name of the Commission, and manage the Commission's accounts, revenue and assets;
4. Develop an annual operating budget for presentation to and approval by the Tribal Administrator;
5. Make recommendations to the Tribal Administrator regarding the Commission's staffing needs to ensure the Commission can effectively perform its governmental functions;
6. Select and execute contracts with professional advisors, such as attorneys, accountants, financial industry and law enforcement specialists, subject to available budget;

7. Develop regulations, policies and procedures to implement provisions of this Ordinance;
8. Accept, review, process, conduct background investigations and make decisions regarding license applications as provided in section IV below;
9. Establish and maintain a reasonable fee schedule to recover costs incurred by the Commission in connection with the processing of license applications and renewals as well as other functions of the Commission;
10. Monitor compliance by all Licensees, including periodic inspections, receipt and review of business activity reports, compliance reports, and audits required by this Ordinance;
11. Investigate reports or indications of violations by Licensees;
12. Develop and implement enforcement procedures to address violations of this Ordinance by any Licensee, consistent with the provisions of section III.E below;
13. Develop and implement procedures to resolve any customer complaint or claim against a Licensee, consistent with the provisions of section III.E below;
14. Consult and coordinate with other governmental agencies regarding business activities regulated by the Commission to ensure that such activities are being conducted in compliance with Tribal and federal consumer financial protection laws; and
15. Provide monthly reports to the Tribal Administrator and quarterly reports to the General Council regarding the Commission's activities.

D. Commissioners. The Kashia Lending Commission shall initially be staffed by one (1) Commissioner retained by the Tribal Administrator in accordance with applicable Tribal law, policies and procedures. The number of Commissioners may be increased as provided in section III.D.3 below to ensure the timely performance of all governmental functions of the Commission.

1. *Qualifications of Commissioners*. Each person retained as a Commissioner must satisfy all of the following requirements, subject to the provisions of section III.D.3 below:
 - a. Each Commissioner must be a duly enrolled Tribal Member.
 - b. Each Commissioner must be at least 25 years of age.
 - c. Each Commissioner must possess a high school diploma, GED, or comparable educational certificate.
 - d. No person shall serve as a Commissioner while holding office on the Tribal Council.
 - e. No person that has been convicted of or pled guilty or no contest to any felony involving violence (such as murder, rape

- or child or elder abuse), financial crime (such as embezzlement) or dishonesty (such as fraud) may serve as a Commissioner.
- f. No person that has been convicted of or pled guilty or no contest to any felony other than as defined in paragraph e. above within five (5) years prior to the date of his or her appointment to the Commission may serve as a Commissioner.
 - g. No person that has been denied a license by any federal, state or tribal government agency to engage in any regulated business activity (including employment by a regulated business) may serve as a Commissioner.
 - h. No person may serve as a Commissioner if he or she, or an Immediate Family Member, is employed by, holds a management position or has a financial interest in any lending business or vendor regulated by the Commission.
 - i. No person may serve as a Commissioner if the General Council determines that his or her reputation, habits or associations threaten the integrity, credibility or effective functioning of the Commission.
 - j. Each Commissioner must obtain from the Tribal Council, and maintain at all times while serving as a Commissioner, an Employee License.
 - k. Each Commissioner must be available to perform all the duties required by this Ordinance and applicable Commission regulations, policies and procedures.
2. *Tribal Administrator Authority.* The Tribal Administrator shall oversee the staffing of the Kashia Lending Commission, may increase the number of Commissioners as he or she deems appropriate and, subject to General Council approval, may allow for the appointment of certain Commissioners who are under the age of 25 for training purposes, or non-Members with financial industry experience and expertise subject to available budget.
3. *Removal.* A Commissioner may be removed from his or her position by the Tribal Administrator in accordance with applicable Tribal law, policies and procedures, for any of the following reasons:
- a. Failure to perform his or her duties in a timely and satisfactory manner;
 - b. Failure to comply with any of the qualifications listed in section III.D.1 above at any time during the Commissioner's term of appointment;

- c. Conduct that, in the view of the Tribal Administrator or General Council threatens the effective functioning, integrity or best interests of the Commission and the Tribe; or
 - d. Otherwise as provided by applicable Tribal law, policies and procedures.
- 4. *Vacancy*. Any vacancy created by the death, resignation or removal of a Commissioner may be filled by Tribal Administrator.
- 5. *Compensation*. Each Commissioner may receive such compensation for the fulfillment of his or her duties as the Tribal Administrator may from time to time fix subject to available budget.

E. Commission Regulations.

- 1. The Commission shall be responsible to develop regulations governing the following topics:
 - a. Defining appropriate licensing requirements for the types of Tribal Businesses that may be established in accordance with Section II above.
 - b. Processing License Applications, conducting background investigations, notifying Applicants of Commission decisions, ensuring due process and an opportunity for Applicants and Licensees to be heard regarding denials of initial applications and renewal requests, License suspensions and revocations;
 - c. Fee schedules for License processing and other Commission activities that incur costs;
 - d. Operational requirements applicable to Licensees regarding record keeping and reporting, audits, minimum internal controls, regulatory compliance assurance and procedures for resolving consumer complaints;
 - e. The Commission's compliance monitoring activities, including inspections and investigations related to the operations of Licensees;
 - f. Enforcement procedures to address violations of Tribal law by any Licensee, ensuring due process and an opportunity for Licensees to be heard;
 - g. Procedures to address consumer complaints that any Lender Licensee is not able to resolve through informal means;
 - h. Coordination with other governmental agencies regarding the consumer finance and related activities governed by this Ordinance; and
 - i. Any other subject matter the Commission determines necessary to effectively discharge its duties under this Ordinance.

2. The Commission shall advise the General Council regarding the Regulations it has adopted to satisfy the requirements of this section III.E. The General Council shall retain the authority to modify or revoke, in whole or in part, any Regulation adopted by the Commission as it deems proper.

IV. LICENSING CRITERIA AND PROCEDURES

- A. Applicability. Any person or entity seeking to engage in consumer lending or related business activity authorized by this Ordinance within the jurisdiction of the Kashia Band of Pomo Indians, or to provide certain services to or be employed in certain positions by a licensed Tribal Business, must apply for and receive the appropriate License from the Kashia Lending Commission prior to engaging in such activity, service or employment. Specifically:
 1. Each Tribal Business proposed to be established and to operate within the jurisdiction of the Kashia Band of Pomo Indians must at all times have a current and valid Lender License issued by the Commission.
 2. Each person or entity that contracts to provide services to a Lender Licensee in aid of the Licensee's business, that will have access to the Licensee's assets, accounts or business records, or will be engaged in interaction with the Lender Licensee's customers and/or other consumers, and that receives or is likely to receive at least \$25,000 in consideration therefor, must at all times during the contract term have a current and valid Vendor License issued by the Commission; provided, however, that attorneys, accountants and other professionals subject to state licensing and regulation are not required to be licensed by the Commission.
 3. Each person or entity that provides financing to a Lender Licensee in aid of the Licensee's lending business must have a current and valid Vendor License issued by the Commission; provided, however, that a financial institution regulated by the federal government or any state is not required to be licensed by the Commission.
 4. Each person appointed to serve in a management position of a Lender Licensee or employed by a Lender Licensee in a position with access to the Licensee's assets, accounts, business records or consumer information, or requiring interaction with customers and/or other consumers, must at all times during the course of his or her appointment or employment have a current and valid Employee License issued by the Commission.
 5. The commission may by regulation define other categories of individuals or business entities that require a License.

B. Applications.

1. Each person seeking a License shall submit a completed Application to the Commission on a form prepared by the Commission for that purpose.
2. The Commission shall by regulation define the information and documentation to be included in each Application, ensuring that such information and documentation is sufficient to enable the Commission to perform the investigation necessary to determine each Applicant's suitability for licensing.
3. The Commission shall ensure that each Application is signed under penalty of perjury by the Applicant or an authorized representative of the Applicant verifying the accuracy of all information provided and authorizing the Commission to access the Applicant's criminal history, current credit report(s) and other relevant background information.
4. The Commission shall ensure that each Applicant agrees to submit to the jurisdiction of the Kashia Band of Pomo Indians and to comply with all Tribal and federal consumer financial protection laws for the duration of any License granted.
5. The Commission may fix a reasonable fee to be charged each Applicant to cover the Commission's Application processing costs.

C. Processing.

1. Upon receipt of a complete Application, the Commission shall conduct an investigation of the Applicant's criminal history and creditworthiness, confirm the accuracy of the information provided in the Application, and investigate any negative findings or irregularities.
2. All steps taken during the investigation and the results shall be documented in a written report that also contains an assessment of the Applicant's suitability to be licensed.
3. All documentation shall be retained in the Applicant's file for the duration of any License granted and/or for at least 3 years after the expiration, termination or denial of the License, and kept confidential except as disclosure may be required by applicable Tribal or federal consumer financial protection law.

D. Issuance of License; Term; Renewal; Limitations.

1. If the Commission determines that an Applicant complies with all the licensing requirements of this Ordinance, and that the background investigation has revealed nothing that would call into question the honesty, integrity or financial responsibility of the Applicant, the Commission may issue the requested License.

2. Each License shall be printed on Commission letterhead or otherwise contain the Commission logo or seal, and include the name of the licensee, date of issuance, date of expiration, license number and signature of an Commissioner or other authorized Commission representative.
3. Each License issued by the Commission shall be valid for a term of 2 years.
4. To ensure no interruption in the conduct of business, each Licensee desiring to renew a License should submit a renewal application satisfying all of the requirements of section IV.B above, at least 90 days before the expiration of the existing License.
5. A License does not vest any property or other right in the Licensee, but represents a privilege, revocable by the Commission, to engage in authorized business activities within the jurisdiction of the Kashia Band.
6. A License may not be sold, assigned or otherwise transferred without the prior written consent of the Commission, which shall not be granted unless the proposed transferee satisfies all the requirements of this Ordinance.

E. Denial.

1. An application for a License shall be denied if the Commission determines the existence of any of the following circumstances:
 - a. The Applicant has failed to comply with any of the licensing requirements set forth in section IV.B above
 - b. The Applicant has been convicted of one or more financial crimes or crimes involving dishonesty
 - c. The results of the background investigation reveal that the Applicant lacks honesty, integrity and/or financial responsibility, or that Applicant's reputation, habits or associations may threaten the integrity or lawful operation of a Tribal Business
 - d. The Applicant provided false or misleading information in the Application.
2. The Commission shall notify the Applicant in writing of its determination to deny the requested License, describe the reasons for that decision, and provide the Applicant an opportunity to be heard before issuing a final decision in accordance with procedures described in Commission regulations.
3. The decision of the Commission to deny a requested License after a hearing is conducted, or in the event no hearing is requested, shall be final and not subject to appeal.

F. Suspension / Revocation

1. The Commission may suspend or revoke a License if it determines the existence of any of the following circumstances:
 - a. Any of the grounds for denying a License identified in section IV.E.1 above;
 - b. The Licensee has committed one or more violations of any Tribal or other applicable law;
 - c. The Licensee has failed to obey a lawful order of the Commission, General Council, or any other governmental agency with jurisdiction over the Licensee's activities; or
 - d. The Licensee has falsified any books or records related to any licensed business activity.
2. The Commission shall notify the Licensee in writing of its determination that grounds exist to suspend or revoke the License, describe the reasons for that determination, and provide the Licensee an opportunity to be heard before issuing a final decision in accordance with procedures described in Commission regulations.
3. The decision of the Commission to suspend or revoke a License after a hearing is conducted, or in the event no hearing is requested, shall be final and not subject to appeal.

V. OPERATIONAL REQUIREMENTS AND LIMITATIONS ON CONSUMER LENDING AND RELATED BUSINESS ACTIVITIES

A. Compliance with Tribal and Federal Consumer Financial Laws

1. All Licensees are required to comply with all applicable Tribal law, including the provisions of this Ordinance, Ordinance 13, and all regulations adopted by the Commission pursuant to this Ordinance.
2. All Licensees are required to ensure that every consumer loan transaction, where appropriate, and all other aspects of their business operations, comply with applicable provisions of the federal Truth in Lending Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, IRS reporting requirements, and other federal consumer financial protection laws that are or may become applicable to the business.

B. Authorized Short-Term Internet-Based Consumer Loan Transactions

1. *Eligible Borrowers.* Each person to whom a Lender Licensee makes a consumer loan must be:
 - a. at least 18 years of age,
 - b. not engaged in active duty military service, and
 - c. screened for creditworthiness and determined to satisfy criteria established by the Enterprise for that purpose.

2. *Consumer Loan Amounts; Fees and other Charges.*

- a. Lender Licensees may grant to a qualified borrower a consumer loan in any amount up to, but not exceeding, \$10,000 exclusive of fees, interest or other charges that may be imposed as consideration for the granting of the loan.
- b. No Lender Licensee may charge fees, interest, or other consideration for the granting of a consumer loan that exceeds an effective annual percentage rate of 900%.

3. *Loan Terms; Repayment.*

- a. A Lender Licensee may offer a consumer installment loan that is repaid with substantially equal consecutive payments if each payment is credited against both principal and any interest or fees charged according to a payment schedule set forth in the Consumer Loan Agreement; the term of any installment loan shall be at least 30 days but no more than 5 years.
- b. A Lender Licensee may offer other consumer loan products as may be authorized by the Kashia Lending Commission under terms and conditions set forth in Commission regulations.
- c. A Lender Licensee may accept repayment by any commercially reasonable method, including personal check, cashier's check, money order or, provided the appropriate authorizations have been given as required by federal law, by remotely created check, electronic debit from a customer's bank account or debit card.
- d. Each borrower shall be given the right to repay his or her loan before the end of the agreed upon term without penalty.

4. *Consumer Loan Agreements.* The terms and conditions of each consumer loan made by a Lender Licensee shall be documented in a Consumer Loan Agreement, that the borrower shall be required to electronically sign, containing the following information:

- a. Full legal names of the lender and borrower
- b. Transaction date
- c. Loan amount
- d. Amount to be paid by borrower, including identification of all interest, fees or other amounts to be charged as consideration for the granting of the consumer loan described as a dollar amount and effective annual percentage rate
- e. Payment schedule that specifies the dates on which payments are due and the amount of each payment

- f. Amount of each electronic debit proposed to be taken from a customer's bank account, if any, and confirmation that no debit will be made before any of the dates specified in the payment schedule
 - g. Any fees to be charged for late payment or returned payments
 - h. All other disclosures required by federal truth in lending and other federal consumer financial protection laws
 - i. The borrowers right to early repayment
 - j. A description of the dispute resolution procedures available to the borrower in the event of a complaint or grievance
 - k. Any other information required by the Commission.
- 5. If a borrower fails to make a payment when it is due or if the instrument offered by a borrower for repayment of a consumer loan is not honored for any reason at the time of presentment by a Lender Licensee, the Lender Licensee may charge a fee; provided that any such fee may not exceed any maximum amount fixed by regulation by the Commission or federal consumer financial protection law.
- 6. The Commission may by regulation impose additional requirements and limitations on consumer loan transactions consistent with industry standards as it determines appropriate.

C. Other Consumer Finance-Related Business Activities

The Commission may by regulation define additional operational requirements and limitations applicable to other categories of Tribal Businesses established in accordance with Section II above, provided such requirements and limitations are at least as stringent as any federal consumer financial protection laws applicable to such business activities.

VI. COMPLIANCE AND ENFORCEMENT

A. Reporting, Inspections and Audit

- 1. Each Licensee shall be required to submit monthly reports of its business activities to the Commission to facilitate the Commission's compliance monitoring responsibilities under this Ordinance. The Commission shall by regulation define the content of such reports.
- 2. Each Licensee shall respond to any request by the Commission for information or documents.
- 3. Each Licensee shall provide Commission representative access, upon reasonable notice and during regular business hours, to inspect its

business premises and all books and records related to its business activities.

4. Each Lender Licensee and its licensed vendors shall be required to undergo an annual regulatory compliance audit. The Commission shall by regulation identify specific issues to be addressed in each such audit.

B. Enforcement Procedures Applicable to Licensee Violations

1. The Commission shall by regulation establish procedures governing the investigation and adjudication of any violations of this Ordinance by a Licensee.
2. Prior to initiating formal enforcement proceedings, the Commission shall attempt to reach an informal resolution of the matter with the Licensee alleged or believed to have committed the violation(s).
3. Formal enforcement procedures shall ensure the Licensee due process and an opportunity to be heard before a decision on the matter is rendered.
4. Any penalty imposed by the Commission must be appropriate given the severity of the violation and may include a civil fine of no more than \$5,000 per day per violation, suspension or revocation of License, or such other remedies as the Commission may identify.
5. The Commission shall define grounds and procedures enabling a Licensee to seek reconsideration of an adverse decision issued by the Commission.
6. The decision of the Commission at the conclusion of initial adjudication and any reconsideration process regarding an alleged violation of this Ordinance shall be final and not subject to appeal.

C. Resolution of Consumer Disputes

1. The Commission shall by regulation establish formal procedures for resolving disputes between any Lender Licensee and its customers or other consumers.
2. Prior to initiating a formal dispute resolution proceeding before the Commission, a Lender Licensee or a licensed vendor should seek to informally resolve the complaint or dispute with the customer or other consumer.
3. Formal dispute resolution procedures shall ensure the consumer due process and an opportunity to be heard before a decision on the matter is rendered.
4. Any remedies imposed by the Commission or other designated dispute resolution body must be appropriate to the nature and severity of the issues giving rise to the dispute, and may include injunctive relief, civil

damages and/or any other remedies authorized by Commission regulation.

5. The Commission shall define grounds and procedures enabling a consumer to seek reconsideration of an adverse decision issued by the Commission or adjudication by or appeal to another dispute resolution body such as a tribal or intertribal court or neutral third-party arbitrator.
6. Subject to the provisions of paragraph 5 above, the decision of the Commission at the conclusion of initial adjudication and any reconsideration process regarding a consumer dispute shall be final and not subject to appeal.
7. In lieu of the formal dispute resolution procedures to be implemented by the Commission in accordance with the above provisions, a Tribal Business may provide for the resolution of consumer complaints by binding arbitration, subject to the following requirements:
 - (a) the process must be meaningfully accessible to individual consumers, such as by allowing the consumer to select the arbitrator and venue and/or allow participation in the proceeding by telephone;
 - (b) the Commission must have approved an Arbitration Policy and Procedure for the Tribal Business; and
 - (c) Tribal Council must have approved a form of Consumer Loan Agreement that clearly describes the process, complies with the provisions of the approved Arbitration Policy and Procedure, and includes a limited waiver of the sovereign immunity of the Tribal Business for purposes of enabling the resolution of consumer complaints by arbitration.

VII. SOVEREIGN IMMUNITY

Nothing in this Ordinance is intended to, nor shall any provision be deemed to, waive the sovereign immunity of the Kashia Band of Pomo Indians or the Kashia Lending Commission for any purpose. Any waiver of sovereign immunity for any purpose must be expressed in a writing approved by the General Council.

VIII. AMENDMENT

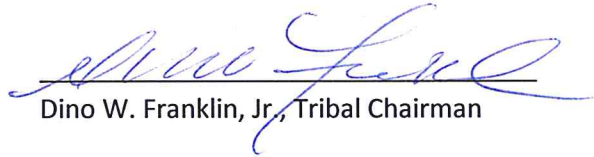
This Ordinance may be amended by the General Council as provided in the Tribe's Constitution and any procedures approved by the General Council.

IX. EFFECTIVE DATE

This Ordinance as amended shall become effective upon its approval by the General Council.

CERTIFICATION

We, the undersigned members of the Tribal Council of the Kashia Band of Pomo Indians of the Stewarts Point Rancheria, hereby certify that the foregoing is a true and correct copy of Ordinance 12 adopted by the General Council on or about August 10, 2013, amended August 8, 2015 and August 11, 2018, and further revised at a duly called special meeting of the General Council at which a quorum was present on September 21, 2019, by a vote of 35 for, 0 against, and 6 abstaining.



Dino W. Franklin, Jr., Tribal Chairman

ATTEST:



Tara Antone, Tribal Secretary