



**TWENTY-NINE PALMS BAND OF MISSION INDIANS
RESOLUTION APPROVING THE TORT LIABILITY ORDINANCE**

RESOLUTION NO. TC012319

WHEREAS, the Twenty-Nine Palms Band of Mission Indians, federally recognized as the Twenty-Nine Palms Band of Mission Indians of California (the “Tribe”) is a federally recognized Indian tribe governed by Articles of Association amended November 20, 2012, and adopted on December 5, 2012 (as amended, the “Articles”); and

WHEREAS, pursuant to Article 3 of the Articles, the Tribal Council is the governing body of the Tribe (the “Tribal Council”); and

WHEREAS, Article 6(a)3 of the Articles grants the Tribal Council the power and responsibility to establish its own rules of procedures for the conduct of its affairs; and

WHEREAS, Article 6(a)6 of the Articles grants the Tribal Council the power to take such actions as are necessary to carry into effect such foregoing power; and

WHEREAS, within Section 12.5 of the Tribal-State Compact governing class III gaming with the State of California, the Tribe agreed to adopt an Ordinance governing all claims of bodily injury, personal injury, or property damage directly arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, provided that such injury occurs at the Gaming Facility or on a road accessing the Facility; and

WHEREAS, the Tribal Council has considered adoption of the Tort Liability Ordinance and finds it in the Tribe’s best interest to ratify and adopt said Tort Liability Ordinance in the form attached to this Resolution; and

WHEREAS, this Tort Liability Ordinance is intended to repeal and replace existing Tribal law governing all claims of bodily injury, personal injury, or property damage directly arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including the Casino Patron Protection Act and any amendments thereto.


NOW, THEREFORE, BE IT RESOLVED, that the Tort Liability Ordinance is hereby adopted in the form attached to this Resolution; and

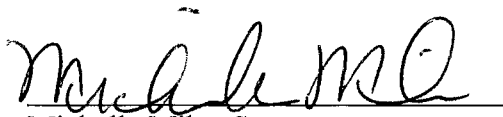
BE IT FURTHER RESOLVED, that the Tort Liability Ordinance hereby repeals and replaces existing Tribal law governing all claims of bodily injury, personal injury, or property damage directly arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including the Casino Patron Protection Act and any amendments thereto; and

BE IT FURTHER RESOLVED, that the Tribal Chairperson, Darrell Mike, is hereby authorized to execute this Resolution on behalf of the tribal government.

CERTIFICATION

We, the undersigned duly elected Chairman and Secretary of the Twenty-Nine Palms Band of Mission Indians, federally recognized as the Twenty-Nine Palms Band of Mission Indians of California, do hereby certify that Resolution No. **TC012319** was adopted at a duly held meeting of the Tribal Council on January 23, 2019, at which a quorum was present, by a vote of 6 for; 0 against; and 1 abstaining.


Darrell Mike, Chairman


Michelle Mike, Secretary

**TWENTY-NINE PALMS BAND OF MISSION INDIANS
TORT LIABILITY ORDINANCE
Adopted January 23, 2019**

The Tribal Council of the Twenty-Nine Palms Band of Mission Indians, empowered by the Tribe's Articles of Association to enact ordinances, hereby enacts this Tort Liability Ordinance in accordance with Section 12.5 of the Tribal-State Gaming Compact between the Tribe and the State of California.

I. Title

This Ordinance shall be known as the "Twenty-Nine Palms Band of Mission Indians Tort Liability Ordinance."

II. Purpose

The purposes of this Ordinance are:

A. To set forth the terms and conditions under which the Tribe will grant a limited waiver of its sovereign immunity in the Tribe's tribal court system for certain claims seeking money damages for bodily injury, personal injury, or property damage alleged to have arisen from the operation of the Tribe's Gaming Operation, Gaming Facility, or Gaming Activities.

B. To establish time limits, substantive standards and procedures for the filing and prompt and fair adjudication of claims against the Tribe seeking money damages for bodily injury, personal injury, or property damage alleged to have arisen from the operation of the Tribe's Gaming Operation, Gaming Facility, or Gaming Activities.

III. Definitions

Unless otherwise required by the context, the following words and phrases shall be defined as follows:

A. "Casino" means the Spotlight 29 Casino and/or the Tortoise Rock Casino.

B. "Claimant" means any person who submits a claim under this Ordinance.

C. "Claims Administrator" means the person appointed to administer all claims filed under this Ordinance.

D. "Compact" means the Tribal-State Gaming Compact between the Tribe and the State of California that became effective December 27, 2018.

E. "County" means either the County of Riverside, California, or the County of San Bernardino, California. When the Ordinance refers to the County, it will be referring to the County in which the Gaming Facility at issue is located.

F. "Employee" means a person who is employed by the Tribe in connection with, or relating to, the Gaming Operation, Gaming Facility, or Gaming Activities, whereby that person receives a salary or hourly wages directly from the Tribe for services rendered. An independent contractor, outside consultant, or vendor is not an Employee. The term does not include agents or representatives of the United States or of the State of California or any of their political subdivisions.

G. "Gaming Activities" means the Class III gaming activities authorized under the Compact.

H. "Gaming Facility" means any building in which Gaming Activities or any Gaming Operations occur, or in which the business records, receipts, or funds of the Gaming Operation are maintained (but excluding off-site facilities primarily dedicated to storage of those records, and financial institutions), which may include parking lots, walkways, rooms, buildings, and areas that provide amenities to Gaming Activity patrons, if and only if, the principal purpose of which is to serve the activities of the Gaming Operation, provided that such area is covered by Insurance. Nothing herein shall be construed to apply in a manner that does not directly relate to the operation of Gaming Activities.

I. "Gaming Operation" means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise, and which shares all aspects of the Tribe's sovereign immunity, but does not include the Tribe's governmental or other business activities unrelated to operation of the Gaming Facility.

J. "Insurance" or "Insurance Policy" means only that valid and binding policy of liability insurance procured by the Tribe with liability coverage and policy limits as described under Section 12.5 of the Compact.

K. "Ordinance" means this Twenty-Nine Palms Band of Mission Indians Tort Liability Ordinance.

L. "Tribal Council" means the governing body of the Tribe, as set forth in the Tribe's Articles of Association.

M. "Tribal Court" means the Twenty-Nine Palms Tribal Court.

N. "Tribal Court of Appeals" means the Twenty-Nine Palms Court of Appeals.

O. "Tribe" means the Twenty-Nine Palms Band of Mission Indians.

IV. Governing Law

All claims under this Ordinance shall be decided in a manner consistent with California tort law governing claims for bodily injury, personal injury, or property damage directly arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, provided that that such injury occurs at the Gaming Facility or on a road accessing the Facility exclusively, except that any and all laws governing punitive damages and attorney's fees shall not be applicable to any claim raised under this Ordinance. This provision does not constitute general consent to California law, nor is it intended as a waiver of the Tribe's sovereign immunity from unconsented suit or legal process. Further, unless otherwise provided herein, a person asserting any claim(s) under this Ordinance must file those claims within the time periods applicable for the filing of claims for money damages against public entities under California Government Code section 810 et seq. Under no circumstances shall there be any awards of punitive damages or attorney's fees or costs.

V. Covered Claims, Limits and Exclusions

A. Covered Claims. This Ordinance covers only those claims that are covered by the Insurance Policy, and that would be considered claims were they to arise under California tort law governing claims for bodily injury, personal injury, or property damage directly arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities, including but not limited to injuries resulting from entry onto the Tribe's land for purposes of patronizing the Gaming Facility or providing goods or services to the Gaming Facility, provided that such injury occurs at the Gaming Facility or on a road accessing the Gaming Facility exclusively, except that any and all laws governing punitive damages and attorney's fees shall not be applicable to any claim raised under this Ordinance. The burden of proof shall be on the Claimant to show that Claimant's presence and purpose for entry onto tribal lands or an access road was lawful and that such injury occurred at the Gaming Facility or on a road exclusively accessing the Gaming Facility. Only those causes of action and remedies created by this Ordinance are cognizable hereunder, or are within the scope of the Tribe's limited waiver of sovereign immunity in the Tribe's tribal court system. Notwithstanding the foregoing, nothing in this Ordinance creates any substantive right to relief or consents to the maintenance against the Tribe of any claim based upon any act or omission of persons who are not officers, employees, or agents of the Tribe.

B. Limits. The Tribe shall not be liable for interest prior to judgment. In no event shall the Tribe be held liable for damages in excess of Ten Million Dollars (\$10,000,000), and then only to the extent that such damages are covered by Insurance required under the terms of the Compact.

C. Exclusions.

1. This Ordinance does not provide any remedy or forum for any claim that does not strictly comply with the procedures and timelines set forth herein.

2. This Ordinance does not provide any remedy or forum, and the Tribe is not liable for, any injury proximately caused by an intentional or negligent act that was committed outside the course and scope of the employment and/or authority of an official, employee or agent of the Tribe or Gaming Operation whose negligence or intentional misconduct are alleged to have caused the injury.

3. This Ordinance does not provide any remedy or forum for claims against the Tribe for equitable indemnity or contribution arising from third-party litigation.

4. Claims generally covered by Workers' Compensation shall not be considered pursuant to this Ordinance, and must be made under the Tribe's Workers' Compensation claims procedures.

5. This Ordinance does not provide any remedy or forum for claims against the Tribe for punitive damages or attorneys' fees or costs.

VI. Exhaustion of Tribal Dispute Process Required

Claimant must first exhaust the tribal dispute process for resolving a claim as provided in this Ordinance. Claimant's failure to exhaust or to strictly comply with any aspect of the tribal dispute process shall result in the forfeiture of Claimant's opportunity to pursue a claim. The Tribe does not waive its sovereign immunity in any forum or for any claim that does not strictly comply with the requirements of the tribal dispute process.

VII. Tribal Dispute Process

A. Notice of Alleged Claim and Tribal Dispute Process. Upon written notice that a Claimant alleges to have suffered an injury or damage covered by this Ordinance, the Tribe shall provide notice by personal service or certified mail or overnight courier with proof of delivery receipt requested, that the Claimant is required, within one hundred eighty (180) days of receipt of written notice of the tribal dispute process, to first exhaust the tribal dispute process, and if dissatisfied with the outcome, is entitled to the appeal process described in this Ordinance. A copy of the tribal dispute process shall accompany such notice.

B. Deadline for Filing Claim. The Claimant must submit his or her written claim, together with all available supporting documentation, within one hundred eighty (180) days of receipt of written notice of the tribal dispute process as long as notice thereof is served either personally on the Claimant or by certified mail or overnight courier with proof of delivery requested to the Claimant and the one hundred eighty (180)-day limitation period is prominently displayed on the front page of the notice. Failure to timely file a claim in accordance with the requirements of this Ordinance shall result in the forfeiture of Claimant's opportunity to pursue a claim under this Ordinance. This time limit is jurisdictional and shall be strictly construed to preclude late-filed claims.

1. In order to file a claim under this Ordinance, the Claimant's presence must have been lawful and arose solely for the purpose of patronizing the Gaming Facility or providing goods or services to the Gaming Facility. The burden of proof shall be on the Claimant to show that Claimant's presence was lawful.

2. A claim must be filed by the Claimant or the Claimant's representative, or, if the claim is one for death by negligent act or omission, by either the personal representative, the surviving spouse, or next of kin of the deceased Claimant.

C. Contents of a Claim. A claim must include the following information:

1. The name, mailing address, and telephone number of Claimant and Claimant's legal representative, if any;

2. A concise statement of the claim's factual basis, including the date, time, place, and circumstances of the act or omission that gave rise to the claim;

3. The identity or description of all persons known to Claimant or believed by Claimant to be involved in the act or omission that gave rise to the claim;

4. The identity or description of all persons known to Claimant or believed by Claimant to have personal knowledge of the act or omission that gave rise to the claim;

5. A concise statement of the nature and the extent of the injury alleged to have been suffered;

6. A statement of the amount of monetary damages requested;

7. Copies of all available supporting documentation in the possession or control of Claimant or his/her legal representative relating to the claim, including without limitation, previously filed claims with the Tribe, investigative reports and documentation of any alleged claim, medical records and reports, security reports, witness statements, photographs and police reports; and

8. The claim must be signed by the Claimant under penalty of perjury. If the Claimant is unable to sign the claim, the claim must be signed under penalty of perjury by another person with personal knowledge of the contents of the claim. The failure of the Claimant to provide the required information may be grounds for denial of the claim.

D. Burden of Proof. The Claimant bears the burden of proving, by a preponderance of the evidence, that Claimant suffered bodily injury, personal injury, or property damage from the operation of the Tribe's Gaming Operation, Gaming Facility, or Gaming Activities, and that Claimant suffered actual damages caused by such injury or property damage.

E. Investigation. The Claims Administrator shall investigate the claim, and may, in his or her discretion, request additional information from Claimant. In addition, the Claims Administrator may request Claimant and/or witnesses to appear and to give recorded testimony under oath as to facts underlying the claim. The failure of Claimant to provide additional information requested by the Claims Administrator or failure of Claimant to appear before the Claims Administrator and to give recorded testimony when requested may result in the denial of the claim.

F. Claims Administrator Decision. The Claims Administrator shall issue a written decision, which shall be a reasoned decision based upon the facts surrounding the injury or property damage. Such decision shall be sent by certified mail, return receipt requested (or any other form of delivery by which confirmation of receipt may be obtained) within 180 days of receipt of the claim, unless such time period is extended by Claimant and the Claims Administrator by mutual agreement. Any decision shall be sent to Claimant at the address provided in the claim. If the claim is denied in whole or in part, the Claims Administrator shall include in the decision notice to Claimant of the option to appeal to the Tribal Court.

VIII. Appeal to Tribal Court

A. Right to Appeal. If the Claimant is dissatisfied with the Claims Administrator's decision, the Claimant may file an appeal with the Tribal Court in accordance with the rules of the Tribal Court. Discovery in the Tribal Court proceedings shall be governed by procedures comparable to section 1283.05 of the California Code of Civil Procedure. No member of the Tribal Court may be employed by the Gaming Facility or the Gaming Operation.

B. Costs of Appeal. Resolution of the dispute before the Tribal Court shall be at no cost to the Claimant (excluding Claimant's attorney's fees and expenses).

IX. Appeal to Tribal Court of Appeals

A. Right to Appeal. If the Claimant is dissatisfied with the decision of the Tribal Court, the Claimant may appeal the matter to the Tribal Court of Appeals. An appeal to the Tribal Court of Appeals shall be filed in accordance with the rules of the Tribal Court of Appeals. No member of the Tribal Court of Appeals may be employed by the Gaming Facility or the Gaming Operation. Proceedings on appeal shall not be subject to a de novo review, but shall be based solely upon the record developed in the Tribal Court proceeding. The Tribal Court of Appeals shall review all determinations of the Tribal Court on matters of law, but shall not set aside any factual determination of the Tribal Court if such determination is supported by substantial evidence. If there is a conflict in the evidence and a reasonable fact-finder could have found for either party, the decision of the Tribal Court will not be overturned on appeal.

B. Costs of Appeal. Resolution of the dispute before the Tribal Court of Appeals shall be at no cost to the Claimant (excluding Claimant's attorney's fees and expenses).

C. Final Decision. The decision of the Tribal Court of Appeals shall be final and not subject to appeal.

X. Exclusive Remedy

This Ordinance shall be strictly construed to provide the exclusive process and forum for the consideration and resolution of claims authorized by this Ordinance. In the event an action seeking damages for an injury arising from the same incident is filed in another forum or venue during the pendency of a claim pursuant to this Ordinance, the claim filed pursuant to this Ordinance shall be considered to have been abandoned and shall not be eligible thereafter for an award of any kind. This provision shall not be construed to confer any right to bring an action in any other forum, nor as acquiescence by the Tribe or the Gaming Operation to a claim of jurisdiction by a court or agency of any other sovereign.

XI. Enforcement

A judgment issued in accordance with this Ordinance may only be enforced in the Tribal Court.

XII. Limited Waiver of Sovereign Immunity

The Tribe is a federally recognized Indian tribe that retains and has not waived its sovereign immunity from unconsented lawsuit and legal process. If a Claimant has fully exhausted the tribal dispute process, the Tribe expressly waives, and also waives its right to assert, sovereign immunity with respect to resolution of those claims expressly authorized in this Ordinance and section 12.5 of the Compact in the Tribe's tribal court system with jurisdiction over the subject matter, but only up to the ten million dollar (\$10,000,000) limit of the Insurance Policy; provided, however, this limited waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds the ten million dollar (\$10,000,000) limit of the Insurance Policy; and provided further, however, this limited waiver shall not apply to punitive damages or attorneys' fees, or to waive the Tribe's right to assert sovereign immunity in connection therewith.

XIII. Repeal of Prior Tort Claims Ordinance; Effective Date

Any prior Tort Claims Ordinance of the Tribe, including the Casino Patron Protection Act, and amendments thereto are hereby repealed. This Ordinance shall become effective upon the date approved by the Tribal Council.