

Torres Martinez Desert Cahuilla Indians

Tort Liability Ordinance

Ordinance No. 5.12.15

Adopted June 14, 2008
Amended January 16, 2019

SECTION 1: Title

This Ordinance shall be entitled the "Torres Martinez Desert Cahuilla Indians Tort Liability Ordinance."

SECTION 2: Findings

(a) The Tribe endeavors to take all reasonable precautions to protect the health, safety, and welfare of Reservation visitors and patrons of tribal business enterprises. Despite these efforts, accidents occasionally occur. The Tribe desires to create a remedy for any person with a claim of bodily injury, personal injury, or property damage 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. However, no claim for punitive damages, pre-judgment interest, or attorney's fees may be asserted or awarded under this Ordinance.

(b) The Tribe desires and intends by the amendment to this Ordinance to comply with Section 12.5 of the Tribal-State Gaming Compact between the Tribe and the State of California executed in August 2018.

SECTION 3: 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 to suit solely on tort claims for bodily injury, personal injury, or property damage, 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;

- (b) To establish time limits, substantive standards, and procedures for the prompt and fair adjudication of any covered claims against the Tribe; and
- (c) To establish liability insurance requirements for the Tribe's Gaming Operation, Gaming Facility, and Gaming Activities.

SECTION 4: Definitions

The following terms as used in this Ordinance shall have the following meanings:

"Claimant" means the individual who submits a claim.

"Claims Commission" means the three (3)-member tribal claims commission appointed by the Tribe consisting of one (1) tribal government representative and at least one (1) commissioner who is not a member of the Tribe.

"Compact" means the Tribal-State Compact Between the State of California and the Torres Martinez Band of Desert Cahuilla Indians executed by the Governor of California and the Chairperson of the Tribe in August 2018.

"County" means either the County of Riverside, California, or the County of Imperial, California, both of which are political subdivisions of the State. When this Ordinance refers to the "County," it is referring to the County in which the claim arises.

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

"Gaming Facility" means any building in which Gaming Activities or any Gaming Operations occur, or in which business records, receipts, or funds of the Gaming Operation are maintained (excluding offsite facilities primarily dedicated to storage of those records, and financial institutions), and all rooms, buildings, and areas, including hotels, parking lots, and walkways, a principal purpose of which is to serve the activities of the Gaming Operation rather than providing that operation with an incidental benefit. Nothing herein shall be construed to apply in a manner that does not directly relate to the activities of the Gaming Operation.

"Gaming Operation" means any business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise.

"Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, reputation, character, feelings, or estate, of such nature that it would be actionable if inflicted by a private person. The injury must arise out of, be connected with, or relate 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.

"JAMS appeal" means the invocation of the JAMS Optional Arbitration Appeal Procedure, or if those rules no longer exist, the closest equivalent, by a party dissatisfied with the award from the Tribal Court, Claims Commission, or JAMS arbitration.

"JAMS" arbitration" means arbitration before a single arbitrator who shall be a retired judge, in accordance with the JAMS Comprehensive Arbitration Rules and Procedures, or if those rules no longer exist, the closest equivalent.

"State" means the State of California or an authorized official or agency thereof.

"Torres Martinez Desert Cahuilla Indians" means the federally recognized Indian tribe with jurisdiction over the Torres Martinez Indian Reservation.

"Reservation" means all those lands within the exterior boundaries of the Torres Martinez Indian Reservation in Riverside and Imperial Counties, California, held in trust for the Torres Martinez Desert Cahuilla Indians by the United States of America.

"Tribal Chairperson" means the person duly elected under the Tribe's constitution or governing documents to serve as the Tribe's official representative.

"Tribal Council" means the Torres Martinez Desert Cahuilla Indians Tribal Council.

"Tribal Court" means the Tribe's tribal court system.

"Tribal Dispute Process" means the Tribe's administrative remedies for resolving a claim that a claimant must first exhaust before pursuing a claim before the Tribal Court, Claims Commission, or JAMS arbitration.

"Tribal Gaming Agency" means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the National Indian Gaming Commission, primarily responsible for carrying out the Tribe's regulatory responsibilities under the Indian Gaming Regulatory Act and the Tribe's Gaming Ordinance.

"Tribe" means the Torres Martinez Desert Cahuilla Indians, a federally recognized Indian tribe, or an authorized official or agency thereof.

SECTION 5: Claims Covered by this Ordinance

(a) This Ordinance creates both procedures and substantive rights or causes of action for redress of injuries to person or property arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities. A claim must be a tort claim for money or damages and filed against the Tribe and not an individual.

(b) Except as otherwise specifically provided herein, the Tribe shall be liable, with respect to tort claims arising under this Ordinance in the same manner and to the same extent as the State would be liable under like circumstances, but shall not be liable for interest prior to judgment, punitive damages, or attorney's fees. With respect to any claim asserted under this Ordinance, the Tribe shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available, as well as any other defenses to which the Tribe is entitled. In no event shall the Tribe be held liable per occurrence for damages in excess of ten million dollars (\$10,000,000) or the limits of an applicable insurance policy, whichever is greater, and then only to the extent that such damages are covered by insurance required under the terms of the Tribe's Compact.

(c) The Tribal Gaming Agency shall make this Ordinance available in hard copy or on the Gaming Facility's website to its patrons or their legal representatives.

SECTION 6: Claims Excluded by this Ordinance

(a) This Ordinance does not provide any remedy or forum for claims or injuries –

- (1) caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization;
- (2) arising from actual or prospective contractual relationships between the Tribe and other parties;
- (3) against the Tribe for equitable indemnity or contribution arising from third party litigation;
- (4) against the Tribe for punitive or exemplary damages, pre-judgment interest, or attorney's fees;
- (5) based on absolute or strict liability;
- (6) based on a failure to make an inspection, or by reason of making an inadequate or negligent inspection;

- (7) caused by adopting or failing to adopt any law or failing to enforce any law; or
- (8) caused by misrepresentation, whether or not such misrepresentation be negligent or intentional.

(b) This Ordinance also does not provide a remedy or forum for a claim or injury resulting from an act or omission based upon the exercise of discretion, whether or not such discretion be abused.

SECTION 7: Exclusive Remedy

(a) This Ordinance provides the exclusive procedure, forum, and remedy for pursuit of claims for injury against the Tribe arising out of, connected with, or relating to the operation of the Gaming Operation, Gaming Facility, or the Gaming Activities.

(b) If any court of competent jurisdiction construes this Ordinance to constitute a waiver, in whole or in part, of the Tribe's sovereign immunity except in strict accordance with the terms of this Ordinance, this Ordinance shall immediately and without further action become null and void, retroactive to the day prior to the incident or occurrence giving rise to such judicial decision.

(c) Except as may be expressly provided herein, claimant waives any right to proceed in any court of competent jurisdiction by proceeding under this Ordinance. A final determination of a claim as provided herein, whether by acceptance, settlement, or adjudication, shall be final and conclusive on claimant. Said final determination shall constitute a complete release by the claimant of any past, present, or future claim or injury, known or unknown, arising from or related to the same or connected circumstances as against the Tribe and its officers, employees, and agents whose acts or omissions gave rise to the claim.

SECTION 8: Tribal Dispute Process

(a) A person with claims for money damages against the Tribe 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 attorney's fees.

(b) A claim relating to a cause of action for death or for injury to person or to personal property shall be made to the Tribe by written notice not later than six months after the accrual of the cause of action. Upon written notice that a claimant claims to have suffered an injury or damage, the Tribe shall provide notice by personal service or certified mail, return receipt requested, that the claimant is required within 180 days to file his or her formal claim as provided herein, that the claimant is required to exhaust

the Tribal Dispute Process, and that if dissatisfied with the resolution, the claimant is entitled to further pursue the claim as provided herein.

(c) A claimant or his or her representative must file a formal written claim with the Tribal Council presenting all material facts relating to the alleged incident and injury. The claim must be against the Tribe, not any individual. At a minimum, the formal written claim must contain the following:

- (1) The name, mailing address, and telephone number of the claimant;
- (2) The date, place, and other circumstances of the occurrence which gave rise to the claim asserted;
- (3) A general description of the injury, damage, or loss incurred so far as it may be known at the time of presentation of the claim;
- (4) The names of the Tribal officials, employees, or agents causing the injury, damage, or loss, if known;
- (5) The identity or description of all other persons involved in the incident or occurrence that gave rise to the claim;
- (6) The identity or description of all witnesses to the incident or occurrence that gave rise to the claim;
- (7) The alleged damage or injury suffered, and the compensation requested as of the date of the presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, together with the basis of computation of the amount claimed; and
- (8) All supporting documentary evidence and written witness statements the claimant intends to rely on.

(d) The claim must be signed by the claimant under penalty of perjury. If the claimant is unable to sign the claim because of physical or mental incapacity, or because the claimant is deceased, the claim must be signed under penalty of perjury by another person with personal knowledge of the contents of the claim.

(e) Claimant must file his/her claim with the Tribal Council, Torres Martinez Desert Cahuilla Indians, 66-725 Martinez Road, Thermal, CA 92274, either by personal delivery, certified U.S. mail, return receipt requested, or overnight courier with proof of delivery requested.

(f) To be timely submitted, the formal claim must be received by the Tribal Council no later than one hundred eighty (180) days after receipt by claimant of written notice of the Tribal Dispute Process served by the Tribe on claimant personally or by certified mail with an executed return receipt by claimant. The 180-day limitation period shall be prominently displayed on the front page of the notice. All other dispute resolution processes shall be stayed until the completion of the Tribal Dispute Process by the Tribal Council or 180 days from the date the claim is filed in accordance with the Tribal Dispute Process, whichever first occurs, unless the Tribe and claimant mutually agree to a longer stay period.

(g) Within 180 days from the date the formal claim is filed in accordance with this Tribal Dispute Process, the Tribal Council or its designated representative shall, in writing to the claimant, (1) allow the claim and pay the entire amount, (2) allow part of the claim and pay part of the amount, rejecting the rest, or (3) reject the entire claim and pay nothing. If the Tribal Council fails to act within the time prescribed, the claim shall be deemed rejected in its entirety.

(h) If the claim is allowed in full and the claimant accepts the amount allowed, no suit may be maintained on any part of the cause of action to which the claim relates. If the claim is allowed in part and the claimant accepts the amount allowed, no suit may be maintained on that part of the cause of action which is represented by the allowed portion of the claim. If the claim is allowed in part, no suit may be maintained on any portion of the cause of action where the claimant has accepted the amount allowed in settlement of the entire claim.

SECTION 9: Claim Resolution

(a) If dissatisfied with the decision of the Tribal Council, the Claimant has 180 days from receipt of the written decision of the Tribal Council, served by personal delivery or by certified mail return receipt requested, or 360 days from the date the formal claim was filed in accordance with this Tribal Dispute Process if the Tribal Council fails to act within the time prescribed, to file the claim in the Tribal Court, Claims Commission, or JAMS arbitration unless the parties agree in writing to extend the period while they seek to compromise the claim.

(b) No member of the Tribal Court or Claims Commission may be employed by the Gaming Operation or Facility. Resolution of the dispute before the Tribal Court or the Claims Commission shall be at no cost to the claimant (excluding claimant's attorney's fees).

(c) If the Tribe and claimant resolve the dispute through JAMS arbitration, the Tribe shall initially bear the cost of JAMS and the arbitrator, but the arbitrator may award costs (but not attorney's fees) to the prevailing party not to exceed those allowable in a suit in California Superior Court.

(d) The Tribe consents to Tribal Court, Claims Commission, and JAMS arbitration adjudication to the extent of the limits of any applicable insurance policy. Discovery in the Tribal Court, Claims Commission, or JAMS arbitration proceedings shall be governed by tribal rules and procedures comparable to section 1283.05 of the California Code of Civil Procedure.

(e) Any party dissatisfied with the award from the Tribal Court, Claims Commission, or JAMS arbitration may at the party's election invoke the JAMS appeal, provided that the party making the election must bear all costs and expenses of JAMS and the arbitrator associated with the JAMS appeal, regardless of the outcome.

(f) The JAMS appeal shall take place in the County and shall use one arbitrator, agreed upon by the parties, and shall not be a de novo review, but shall be based solely upon the record developed in the Tribal Court, Claims Commission, or JAMS arbitration proceeding.

(g) The JAMS appeal shall review all determinations of the Tribal Court, Claims Commission, or JAMS arbitrator on matters of law, but shall not set aside any factual determinations of the Tribal Court, Claims Commission, or JAMS arbitrator 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, Claims Commission, or JAMS arbitrator will not be overturned on appeal.

SECTION 10: Payment of Awards and Attorney's Fees

(a) The Tribe shall carry no less than ten million dollars (\$10,000,000) in public liability insurance for covered claims. The Tribe shall not be obligated to pay any award that is not covered by, or exceeds the policy limits of, the Tribe's public liability insurance.

(b) No attorney representing a claimant pursuant to this Ordinance shall charge, demand, receive, or collect from the claimant for services rendered on the claim, fees in excess of twenty-five percent (25%) of any judgment, settlement, or award rendered or paid by the Tribe or its insurer to the claimant. Each attorney who appears on behalf of a claimant must attest under penalty of perjury to his/her compliance with the limitations set forth in this paragraph. By making such attestation, the attorney agrees that if the attestation is false, the Tribe may bring an action against the attorney in either state or federal court to recover the amount of all fees actually charged to the claimant and report such falsehood to the appropriate state bar.

SECTION 11: Governing Law

Except for punitive damages, California tort law shall govern all claims of bodily injury, personal injury, or property damage 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.

SECTION 12: Sovereign Immunity

To effectuate the Tribe's consent to claim resolution in the Tribal Court, Claims Commission, JAMS arbitration, and JAMS appeal, the Tribe, in the exercise of its sovereignty, expressly waives, and also waives its right to assert, sovereign immunity in connection with the jurisdiction of the Tribal Court, Claims Commission, JAMS arbitration, JAMS appeal, and in any suit in state or federal court to enforce an obligation hereunder or enforce or execute a judgment based upon the award of the Tribal Court, Claims Commission, JAMS arbitrator, or JAMS appeal; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds \$10 million or the policy limits, whichever is greater. Except as expressly provided herein, this Ordinance does not constitute a waiver of the sovereign immunity of the Tribe or its officers, employees, attorneys, and agents, and the Tribe reserves all rights for itself and its officers, employees, attorneys, and agents not expressly waived by this Ordinance.

SECTION 13: Interpretation

This Ordinance, any ambiguities herein, and the waiver of sovereign immunity shall be interpreted and construed strictly and narrowly in favor of the Tribe. Nothing in this Ordinance may be interpreted or construed to grant or permit any jurisdiction to the State not otherwise granted by agreement or federal law.

SECTION 14: Severability


Except for the provision that damages cannot be awarded against the Tribe that are not covered by a policy of liability insurance required under the Compact, or in an amount that exceeds the limits of such policy, and except for the provision that if any court of competent jurisdiction construes this Ordinance to constitute a waiver, in whole or in part, of the Tribe's sovereign immunity except in strict accordance with the terms of this Ordinance, this Ordinance shall immediately and without further action become null and void, retroactive to the day prior to the incident or occurrence giving rise to such judicial decision. If any other part of this Ordinance is declared void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Ordinance shall not be impaired and shall continue in full force and effect.

SECTION 15: Effective Date


This amended Ordinance shall take effect immediately upon its adoption by the Torres Martinez Desert Cahuilla Indians and be applied prospectively only from the date of amendment. The Tribal Council may further amend this Ordinance as may be required by the State to comply with the Compact.

CERTIFICATION

We, the duly-elected Tribal Chairman and Tribal Secretary of the Torres Martinez Desert Cahuilla Indians, do hereby certify that the foregoing Ordinance was adopted by the Tribal Council pursuant to its emergency powers under Article IX, Sec. 2 of the Tribe's Constitution at a properly called meeting with a quorum present on January 16, 2019 by vote of 3 in favor, 0 opposed, and 1 abstained.


SIGNING FOR
Tribal Chairman

ATTEST:


Tribal Secretary