

**VIEJAS BAND OF KUMEYAAY INDIANS
TRIBAL CODE**

TORT LIABILITY ORDINANCE

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**VIEJAS BAND OF KUMEYAAY INDIANS
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TORT LIABILITY ORDINANCE

Section 1 – General Provisions

- 1.01 Title.** This Ordinance shall be entitled the “Viejas Band of Kumeyaay Indians Tort Liability Ordinance.”
- 1.02 Purpose.** The purposes of this Ordinance are to:
- (A) Set forth the terms and conditions under which the Viejas Band will grant a limited waiver of its sovereign immunity solely for Claims seeking monetary damages for bodily injury, personal injury, or property damage directly related to the operation of Gaming Activities.
 - (B) Establish time limits, substantive standards, and procedures for the filing and prompt and fair adjudication of Claims against the Viejas Band seeking monetary damages for bodily injury, personal injury, or property damage directly related to the operation of Gaming Activities.
- 1.03 Governing Law.** As limited by IGRA, the Compact, and the provisions of this Ordinance, all claims under this Ordinance shall be decided in a manner consistent with laws adopted by the Viejas Band governing claims for bodily injury, personal injury, or property damage, and shall exclude any award of punitive damages. California tort law may be cited as persuasive authority. This provision does not constitute general consent to California law, Federal law, or the laws of any other state or jurisdiction, nor is it intended as a waiver of the Viejas Band’s sovereign immunity from unconsented suit or legal process.
- 1.04 Effective Date.** This Ordinance shall take effect immediately and shall repeal, supersede, and replace any prior ordinance enacted by the Viejas Band governing claims for bodily injury, personal injury, or property damage.
- 1.05 Notification of Injury.** To have an actionable Claim under this Ordinance, a Claimant must notify the Viejas Claims Administrator of an alleged Compensable Injury no later than 180 Days after the date of the incident causing the alleged Compensable Injury. Any Claim for which notice is provided more than 180 Days after the date of the incident causing the alleged Compensable Injury is time barred.

Section 2 – Definitions

- 2.01 Claim** means a written document, together with supporting information and documentation, submitted by a Claimant pursuant to the procedures and requirements set forth in Section 4 of this Ordinance, seeking monetary damages for a Compensable Injury.
- 2.02 Claimant** means a person who submits a Claim under this Ordinance alleging a Compensable Injury.
- 2.03 Claims Administrator** means the Viejas Risk Management Department or such other designee of the Viejas Band assigned to receive, investigate, evaluate, negotiate, and determine the resolution of Claims filed under this Ordinance.
- 2.04 Claims Resolution** means the written resolution by the Claims Administrator of a Claim timely filed under this Ordinance.
- 2.05 Compact** means the operative Tribal-State Class III Gaming Compact between the State of California and the Viejas Band, including any amendments thereto.
- 2.06 Compensable Injury** means an injury to a person or property directly related to the operation of Gaming Activities, which results in monetary damages, and was actually and proximately caused by the negligent or intentional act of an official, agent, or employee of the Viejas Band. “Compensable Injury” does not include (1) any injury allegedly sustained by an official, agent or employee of the Viejas Band in connection with his or her employment or performance of official duties, (2) any claim for punitive damages, (3) any injury proximately caused by a negligent or intentional act that was committed outside the course and scope of the employment and/or authority of an official, employee, or agent of the Viejas Band whose act or omission proximately caused or contributed to the cause of the injury, or (4) any injury proximately caused by the act or omission of a person who is not an officer, employee or agent of the Viejas Band or who is not otherwise directly subject to the direction, supervision or control of the Viejas Band. The Viejas Band specifically disclaims, and shall not be liable or responsible for, any negligent or intentional act or omission of a patron at the Gaming Facility.
- 2.07 Court of Appeal** means the appellate court of the Viejas Band.
- 2.08 Day** means all days of a calendar year, inclusive of weekdays, weekends, and holidays.
- 2.09 Gaming Activities** means the Class III Gaming activities authorized under the Compact.
- 2.10 Gaming Facility** means any building in which Gaming Activities occur on Indian lands over which the Viejas Band exercises jurisdiction.
- 2.11 Gaming Operation** means the business enterprise that offers and operates Gaming Activities, whether exclusively or otherwise.

- 2.12 IGRA** means the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.).
- 2.13 Judgment** means a judgment issued by the Tribal Court or Review Board.
- 2.14 Ordinance** means this Viejas Band of Kumeyaay Indians Tort Liability Ordinance.
- 2.15 Review Board** means a board comprised of a minimum of three (3) individuals appointed by the Tribal Council to resolve disputes pursuant to Section 5 of this Ordinance.
- 2.16 Tribal Court** means the tribal court of the Viejas Band.
- 2.17 Viejas Band** means the Capitan Grande Band of Diegueno Mission Indians of California: Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Section 3 – Covered Claims, Limits, and Exclusions

- 3.01 Covered Claims.** Only those claims for Compensable Injury created by this Ordinance are cognizable hereunder or are within the scope of the Viejas Band’s limited waiver of sovereign immunity. All other claims and remedies are expressly precluded. Nothing in this Ordinance creates any substantive right to relief or consents to the maintenance against the Viejas Band of any Claim based upon any act or omission of persons who are not officers, employees, or agents of the Viejas Band.
- 3.02 Limits.** The Viejas Band shall not be liable for interest prior to judgment. In no event shall the Viejas Band be held liable for damages in excess of \$10,000,000, and then only to the extent that such damages are covered by the Viejas Band’s liability insurance.
- 3.03 Exclusions.**
- (A) This Ordinance does not authorize a claim for any alleged occupational injury or illness to an employee of the Viejas Band arising from or related to employment.
 - (B) This Ordinance does not authorize claims against the Viejas Band for equitable indemnity or contribution arising from third-party litigation.
 - (C) This Ordinance does not authorize claims against the Viejas Band to recover punitive damages, attorneys’ fees, or costs.

Section 4 – Tribal Dispute Process

- 4.01 Notice.** If the Claims Administrator receives timely notice compliant with Section 1.05 of this Ordinance, the Claims Administrator shall provide notice of its tribal dispute process under this section, including the limitations period in which a Claim must be filed with the

Claims Administrator. Notice shall be served either personally or by certified mail with return receipt requested.

4.02 Filing of Claim. Claimant shall file a Claim in writing with the Claims Administrator within 180 Days of receipt of written notice pursuant to Section 4.01. Claimant must (1) present all information required under Section 4.03, (2) fill out and sign a medical record release authorization form, and (3) deliver such information to the following address by certified mail or any other form of delivery by which confirmation of receipt may be obtained: Viejas Claims Administrator, 5000 Willows Road, Alpine, CA 91901. Failure to timely file a Claim with all information required under Section 4.03 shall result in forfeiture of the Claim. The 180 day time limit is jurisdictional and shall be strictly construed to preclude incomplete or late-filed Claims.

4.03 Contents of Claim. A Claim must include the following information:

- (A) The name, mailing address, and telephone number of Claimant and Claimant's legal representative, if any;
- (B) The date, time, location, and detailed account of the alleged incident or occurrence that gave rise to the Claim;
- (C) A detailed description of the nature and extent of the alleged injury, the alleged cause of the alleged injury, and the identification of the type and amount of monetary damages requested;
- (D) The identity or description (if identity unknown) of all persons known to Claimant or believed by Claimant to be involved in the alleged incident or occurrence that gave rise to the Claim, including a detailed description of each persons' involvement or knowledge;
- (E) The identity or description (if identity unknown) of all persons known to Claimant or believed by Claimant to have personal knowledge of the alleged incident or occurrence that gave rise to the Claim, including without limitation, name, address, and phone number of such persons, including any persons who actually observed the incident or occurrence, as well as a detailed description of each persons' knowledge;
- (F) The identity or description (if identity unknown) of all persons known to Claimant or believed by Claimant to have personal knowledge of the alleged damage or injury claimed by Claimant arising out of, connected with, or related to the alleged incident or occurrence that gave rise to the Claim, including without limitation, name, address, and phone number of such persons (including Claimant's treating physicians);
- (G) Copies of all documentation in the custody, possession, or control of Claimant, Claimant's legal representatives, or Claimant's medical providers and insurers

relating to the Claim, including, without limitation, evidence indicating Claimant's actual presence at the Gaming Facility on the date of the alleged incident or occurrence, Claimant's medical records, reports, and billing for care received as a result of the alleged incident or occurrence, investigative reports, witness statements, witness audio recordings, contracts, non-privileged communications regarding the alleged incident or claimed damages, photographs, video, and police and incident reports; and

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, 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 information required by this section and/or Claimant's failure to sign the Claim as stated herein shall result in denial of the Claim with prejudice.

- 4.04 Burden of Proof.** The Claimant bears the burden of proving, by a preponderance of the evidence, that Claimant incurred a Compensable Injury directly related to the operation of Gaming Activities.
- 4.05 Exhaustion of Tribal Dispute Process.** Claimant must first exhaust the Viejas Band's tribal dispute process set forth in this Section 4, which is a condition precedent to the attachment of Review Board or Tribal Court jurisdiction. Claimant's failure to exhaust or to strictly comply with any requirement of the tribal dispute process shall result in denial of the Claim with prejudice, thereby precluding jurisdiction of the Review Board or Tribal Court over the Claim. The Viejas Band 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.
- 4.06 Investigation.** The Claims Administrator shall investigate the Claim, and may, at its discretion, request additional information from Claimant. In addition, the Claims Administrator may request Claimant and witnesses to appear before it and to provide recorded testimony under oath administered by an authorized notary public as to facts underlying the Claim. The Claimant must provide all additional information requested by the Claims Administrator within 45 days of receipt of the request, which may be extended an additional 15 days upon mutual agreement between Claimant and the Claims Administrator. The failure of Claimant to timely provide additional information requested by the Claims Administrator, failure to execute a medical record release, or failure of Claimant to appear before the Claims Administrator and give recorded testimony when requested shall result in denial of the Claim with prejudice.
- 4.07 Claims Resolution.** The Claims Administrator shall issue a Claims Resolution, which shall be sent by certified mail with return receipt requested, within 180 Days of receipt of the Claim or such time as required to fully investigate a Claim. Such time period may also be extended by Claimant and the Claims Administrator through mutual agreement but in no event shall the length, or cumulative length, of any extension(s) exceed 180 Days. Any Claims Resolution shall be sent to Claimant at the address provided in the Claim. If the

Claim is denied in whole or in part, the Claims Resolution shall notify Claimant of Claimant's option to: (1) initiate a hearing before the Review Board (for claims of \$25,000 and under) pursuant to Section 5 or (2) initiate a lawsuit in the Tribal Court (for claims over \$25,000), either of which must occur within 30 Days of receipt of the Claims Resolution.

Section 5 – Review Board Hearing

- 5.01 Review Board Jurisdiction.** All Claims for Compensable Injury seeking an award of damages in the amount of \$25,000 or less shall be filed with the Review Board pursuant to this section.
- 5.02 Review Board Hearing Request.** Following the mandatory exhaustion of the tribal dispute process under Section 4, and no later than 30 Days after receipt of the Claims Resolution, a Claimant may initiate a proceeding before the Review Board challenging a Claims Resolution.
- 5.03 Burden of Proof.** The Claimant bears the burden of proving, by a preponderance of the evidence, that Claimant incurred a Compensable Injury directly related to the operation of Gaming Activities.
- 5.04 Costs and Awards.** Each party shall bear its own costs, including, without limitation, attorney's fees, expert fees, witness fees, discovery-related fees, interpreter fees, and court reporter fees. Any Judgment issued by the Review Board shall be limited to the amount in controversy, shall not exceed \$25,000, and shall not include an award of punitive damages. The Review Board shall proportionately assign awardable damages to reflect the percentage of the Claimant's fault.

Section 6 – Tribal Court Adjudication

- 6.01 Tribal Court Jurisdiction.** All claims for Compensable Injury seeking an award of damages in excess of \$25,000 shall be heard by the Tribal Court pursuant to this section.
- 6.02 Initiating Lawsuit.** Following the mandatory exhaustion of the tribal dispute process under Section 4, and no later than 30 Days after receipt of the Claims Resolution, a Claimant may initiate a proceeding before the Tribal Court challenging a Claims Resolution.
- 6.03 Burden of Proof.** The Claimant bears the burden of proving, by a preponderance of the evidence, that Claimant incurred a Compensable Injury.
- 6.04 Costs and Awards.** Each party shall bear its own costs, fees, and expenses, including, without limitation, attorney's fees, expert fees, consultant fees, witness fees, discovery-related fees, interpreter fees, and court reporter fees. Any Judgment issued by the Tribal

Court shall be limited to the amount in controversy or the insurance limits under Section 3.02, whichever is less, and shall not include an award of punitive damages. The Tribal Court shall proportionately assign awardable damages to reflect the percentage of the Claimant's fault.

- 6.05 Transfer to Review Board.** Following the exchange of mandatory initial disclosures under Chapter 4 of the Viejas Code of Civil Procedure, upon request by any party, the Tribal Court shall transfer to the Review Board any proceeding where the amount in controversy is \$25,000 or less.

Section 7 – Appellate Review

- 7.01 Initiating an Appeal.** Any party may appeal a Judgment issued under this Ordinance by filing such appeal with the Court of Appeal. The Notice of Appeal must be filed no later than 30 Days following service of the Notice of Entry of Judgment. The party filing the appeal must bear all costs and expenses associated with the appeal, regardless of the outcome.
- 7.02 Standard of Review.** The Court of Appeal shall review all legal findings by the Review Board or the Tribal Court but shall not set aside any factual findings supported by substantial evidence. The Court of Appeal shall have no authority to award any monetary damages exceeding the amount in controversy or the insurance limits under Section 3.02, whichever is less, and shall not award punitive damages. For appeal of a Judgment issued by the Review Board, the Court of Appeal shall have no authority to award monetary damages in excess of \$25,000, and shall not award punitive damages. The Court of Appeal does not have the authority to award costs, fees, and expenses, including, without limitation, attorney's fees, costs, lower court costs, or expert fees.
- 7.03 Final and Binding Decision.** A decision issued by the Court of Appeal under this Ordinance shall be final, binding, and not subject to further review.

Section 8 – Exclusive Remedy

This Ordinance provides the exclusive procedure, forum, and remedies for making a claim against the Viejas Band for a Compensable Injury. Except as expressly provided herein, this Ordinance does not constitute a waiver of the sovereign immunity of the Viejas Band or its officers, employees, and agents. The Viejas Band reserves all rights for itself and its officers, employees, and agents not expressly waived by this Ordinance.

Section 9 – Enforcement

A Judgment issued under this Ordinance may only be enforced in the Tribal Court under applicable law enacted by the Viejas Band.

Section 10 – Limited Waiver of Sovereign Immunity

The Viejas Band is a federally recognized Indian tribe that retains and has not waived its sovereign immunity from unconsented lawsuits and legal processes. If a Claimant has fully exhausted the tribal dispute process, the Viejas Band expressly waives its sovereign immunity and its right to assert sovereign immunity, and all defenses based thereon, with respect to its consent to the jurisdiction of the Review Board, the Tribal Court, and the Court of Appeal as provided in this Ordinance, and in any lawsuit under Section 9 to enforce a Judgment in Tribal Court; provided, however, this limited waiver shall not apply to punitive damages or for portions of a Claim or award that exceed \$10,000,000 or the insurance limits under Section 3.02, whichever is less.



TRIBAL GOVERNMENT

P. O. Box 908
Alpine, CA 91903
1 Viejas Grade Road
Alpine, CA 91901

John A. Christman, Chairman
Victor E. Woods, Vice Chairman
Rene Curo, Tribal Secretary
Samuel Q. Brown, Tribal Treasurer
Adrian M. Brown, Councilman
Gabriel T. TeSam, Jr., Councilman
Kevin M. Carrizosa, Councilman

Phone: 619.445.3810
Fax: 619.445.5337
viejas.com

**TRIBAL COUNCIL RESOLUTION
AMENDING THE 2016 TORT LIABILITY ORDINANCE**

Resolution No. 081623 B

WHEREAS, the Viejas Band of Kumeyaay Indians, (appearing in the U.S. Federal Register as the *Capitan Grande Band of Diegueno Mission Indians of California: Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California*) (the "Viejas Band") is a self-governing federally recognized Indian Tribe exercising sovereign authority over the lands of the Viejas Indian Reservation.

WHEREAS, the Viejas Band is governed by a duly elected Tribal Council (the "**Tribal Council**");

WHEREAS, the Tribal Council desires to amend and restate the Tort Liability Ordinance enacted on October 31, 2016 to satisfy the terms under the *2016 Tribal-State Compact between the State of California and the Viejas Band of Kumeyaay Indians* ("Compact"); and

WHEREAS, the Tribal Council has reviewed the amended and restated Tort Liability Ordinance incorporated in the attached Exhibit A, and desires that they shall take effect immediately.

NOW, THEREFORE BE IT RESOLVED THAT THE TRIBAL COUNCIL HEREBY CERTIFIES AND DULY APPROVES AND AUTHORIZES, AFTER MOTION AND UPON THE VOTE OF THE MAJORITY OF COUNCIL MEMBERS, THE FOLLOWING:

The Tribal Council adopts the amended and restated 2016 Tort Liability Ordinance incorporated in the attached Exhibit A.

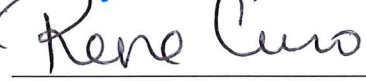
The Chairperson of the Viejas Band, or in the Chairperson's absence, the Vice Chairperson, is hereby authorized to take any required action and to execute on behalf of the Viejas Band, any and all documents required to further the purposes of this resolution.

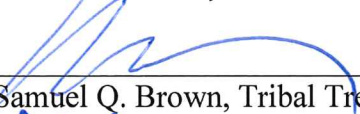
CERTIFICATION

Resolution passed this 16th day of August, 2023, at a duly noticed meeting of the Viejas Tribal Council by a vote of 3 for 0 against, and 0 abstaining.


John A. Christman, Chairman

Absent
Victor E. Woods, Vice Chairman


Rene Curo, Tribal Secretary


Samuel Q. Brown, Tribal Treasurer

Absent
Adrian M. Brown, Councilman


Gabriel T. TeSam, Jr., Councilman

Absent
Kevin M. Carrizosa, Councilman