

MORONGO BAND OF MISSION INDIANS
ORDINANCE 16

TORT LIABILITY AND PATRON CLAIMS
ORDINANCE

Effective January 22, 2018

Morongo Band of Mission Indians

TORT LIABILITY AND PATRON CLAIMS ORDINANCE

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MORONGO BAND OF MISSION INDIANS

TORT LIABILITY AND PATRON CLAIMS ORDINANCE

SECTION 1. STATEMENT OF PURPOSE.

The Morongo Band of Mission Indians has enacted this Tort Liability and Patron Claims Ordinance in accordance with the terms of its 2017 Class III Gaming Compact with the State of California (hereinafter "Compact"). This Ordinance sets forth the procedures by which a person may pursue a Tort Claim or a Patron Claim, as those terms are defined herein. Upon the Compact becoming effective as provided in Section 11 below, and the approval of this Ordinance by the Tribe's General Membership, this Ordinance shall replace the Tribe's prior Tort Liability and Patron Claims Ordinance retroactive to the effective date of the Compact, and from that date forward shall govern the pursuit of all claims covered by this Ordinance.

SECTION 2. DEFINITIONS.

2.1. "Claimant" means a person who submits, or on whose behalf is submitted, a Tort Claim – i.e., a written claim seeking compensation for a Compensable Injury.

2.2. "Compact" is the Class III gaming compact between the Tribe and the State of California that was executed by the Tribe on or around September 6, 2017, and that took effect on January 22, 2018, when notice that the Compact had been deemed approved was published in the Federal Register.

2.3. "Compensable Injury" means a bodily injury, a personal injury, or property damage that meets the following three criteria: (i) is proximately caused by the negligent or intentional acts or omissions of the Tribe or an official, agent, or employee of the Tribe, for which the Tribe would be liable under the laws of the State of California if the Tribe were an entity subject to the laws of the State of California; *and* (ii) arises out of, is connected with, or relates to the operation of the Gaming Operation, Gaming Facility, or Gaming Activities, including, but not limited to, injuries resulting from entry onto the Tribe's land for the purpose of patronizing the Gaming Facility or providing goods or services to the Gaming Facility; *and* (iii) the injury occurs at the Gaming Facility or on a road accessing the Facility exclusively. "Compensable Injury" does not include any injury sustained by an official, agent, or employee of the Tribe in connection with the person's employment or performance of official duties, or any injury sustained by a Tribal member or any person eligible for enrollment in the Tribe.

2.4. "Gaming Activity" means any type of Class III gaming authorized under the Tribe's Compact.

2.5. "Gaming Facility" is any building on the Morongo Indian Reservation in which Gaming Activities or Gaming Operations occur, and all rooms, buildings, and areas, including parking lots and walkways, over which the Tribe exercises jurisdiction and the principal purpose of which is to serve the activities of the Gaming Facility.

2.6. "Gaming Operation" is any business enterprise owned by the Tribe that offers and operates Gaming Activities on the Morongo Indian Reservation.

2.7. "Morongo Gaming Agency" means the regulatory agency created under the Tribe's Gaming Ordinance and responsible for overseeing and regulating the Tribe's Gaming Operations to ensure they are conducted fairly and in compliance with the Indian Gaming Regulatory Act, the Tribe's Gaming Ordinance, and the Compact.

2.8. "Morongo Indian Reservation" means the lands in Riverside County, California, that the United States of America holds in trust for the Tribe or for individual Indians within the boundaries of said Reservation.

2.9. "Morongo Tribal Court" means the judicial body established by the Tribe and vested with jurisdiction to adjudicate disputes arising on the Morongo Indian Reservation, including Tort Claims and Patron Claims asserted under this Ordinance. "Tribal Court" includes the Morongo Tribal Appellate Court.

2.10. "Patron Claim" means a written complaint seeking compensation from the Tribe for purely financial losses arising from the play or operation of any Gaming Activity at the Tribe's Gaming Facility on the Morongo Indian Reservation, including any refusal to pay a patron alleged winnings from any Gaming Activity.

2.11. "Tort Claim" means a written complaint seeking compensation from the Tribe based on a Compensable Injury, together with and including all available supporting information as set forth in Section 8.1.3 of this Ordinance.

2.12. "Tribe" means the Morongo Band of Mission Indians, the federally recognized Indian tribe with jurisdiction over the Morongo Indian Reservation.

SECTION 3. LIMITED WAIVER OF TRIBAL SOVEREIGN IMMUNITY.

The Tribe waives its sovereign immunity and the right to assert sovereign immunity to suit only as necessary to effectuate a person's filing, litigation, and enforcement of Tort Claims and Patron Claims pursuant to Sections 7 and 8 of this Ordinance, and only as to the portion of a Tort Claim or award not exceeding the greater of Ten Million Dollars (\$10,000,000) or the limits of the general commercial liability insurance required by the Compact. The Tribe's waiver of sovereign immunity is subject to, and thus incorporates by reference, the limitations set forth in Section 4 of this Ordinance.

SECTION 4. LIMITATIONS ON LIABILITY AND AWARDS.

4.1. Any claim that does not fall within the express waiver of sovereign immunity set forth in Section 3 of this Ordinance is not covered by this Ordinance and shall not form the basis of any action for any relief in any forum against the Tribe, its Tribal Council members, or against any of its officers, employees, or agents for acts or omissions committed within the course and scope of their duties and the Tribe's authority. The following limitations apply to every claim brought under this Ordinance:

4.1.1. No Claimant may seek compensation in excess of, and no award shall exceed the greater of, Ten Million Dollars (\$10,000,000.00) or the limits of the commercial general liability insurance policy required by the Compact;

4.1.2. No award issued pursuant to this Ordinance may include punitive or exemplary damages, or attorneys' fees;

4.1.3. The only tribal assets that may be levied upon in satisfaction of a Patron or Tort Claim award shall be the Gaming Operation's accounts, and not the Tribe's government accounts;

4.1.4. This Ordinance does not provide any remedy or forum for alleged injuries suffered on or in the course of attempting to enter areas of the Morongo Indian Reservation that are not part of a Gaming Facility or are closed to the general public;

4.1.5. Except as otherwise expressly provided in this Ordinance for Tort Claims and Patron Claims, this Ordinance does not provide any remedy or forum for alleged damages or injuries arising from actual or prospective contractual relationships between the Tribe and other parties;

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

4.1.7. In cases involving wrongful death, the Tribe shall be liable only for actual or compensatory damages authorized under California law; and

4.1.8. Nothing in this Ordinance shall be construed to amend, modify, or repeal any other Tribal Ordinance or Resolution, or any Tribal Ordinance, practice, or policy regarding workers' compensation or other employee insurance policy.

SECTION 5. RECOGNIZED TRIBAL DEFENSES.

With respect to any claim to which this Ordinance applies, the Tribe shall be entitled to assert any defense based upon judicial or legislative immunity that would be available under

California law to the employee or agent of the Tribe whose act or omission gave rise to the claim, as well as any other defenses to which the Tribe is entitled under California law.

SECTION 6. EXCLUSIVE REMEDY.

6.1. This Ordinance provides the exclusive procedure, forum, and remedy for pursuit of Tort Claims and Patron Claims arising under this Ordinance.

6.2. If any California or federal court 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 or the Compact, the waiver provided in this Ordinance shall immediately and without need for further action be withdrawn as to the incident or occurrence at issue to the extent that the waiver exceeds the scope of the waiver required by the Compact, retroactive to immediately prior to the incident(s) or occurrence(s) giving rise to such judicial decision.

SECTION 7. PATRON CLAIMS.

7.1. Submission of Claims. A patron who seeks compensation from the Tribe for purely financial losses based upon the play or operation of any Gaming Activity, including any refusal to pay a patron any alleged winnings from any Gaming Activity, must submit a written complaint to supervisory personnel of the Gaming Operation within three (3) days of the disputed play or operation. Following submission of the complaint, the patron shall be given a copy of the Morongo Gaming Agency's regulations concerning Patron Claims, and advised in writing of the patron's right to request resolution of the Patron Claim by the Gaming Agency within fifteen (15) days of the date that the patron receives notice of that right.

7.2. Alleged Loss Resulting From a Mechanical Failure. If the Morongo Gaming Agency or the Tribal Court, as the case may be, determines that a patron's alleged winnings resulted from a mechanical, electronic, or electromechanical failure and not due to the intentional acts or gross negligence of the Gaming Operation or its agents, the Morongo Gaming Agency (or Court) shall deny the patron's claim for the winnings but shall award reimbursement of the amount wagered by the patron that was lost as a result of any said failure.

7.3. Investigation and Decision by the Morongo Gaming Agency. Upon receipt of a patron's written request for resolution of a Patron Claim timely submitted pursuant to subsection 7.1, the Morongo Gaming Agency shall conduct an appropriate investigation and, within sixty (60) days of the request, issue a written, reasoned decision based on the facts surrounding the dispute and applicable legal principles. The Morongo Gaming Agency's investigation and issuance of its decision shall be at no cost to the patron.

7.4. Patron's Right of Appeal to the Morongo Tribal Court.

7.4.1. If the Morongo Gaming Agency's ruling on a Patron Claim is not to the patron's satisfaction, or if the Gaming Agency fails to issue its decision within sixty (60) days (or within an extended period of time to which the patron has agreed), the patron may invoke his/her right to have the Morongo Tribal Court resolve the Patron Claim. The Tribe does not consent to the jurisdiction of any other court or forum to resolve a Patron Claim that is not resolved by the Morongo Gaming Agency to the satisfaction of a patron.

7.4.2. The Morongo Tribal Court shall review and decide a Patron Claim pursuant to a process that incorporates essential elements of fairness and due process.

7.4.3. If the Morongo Tribal Court is reviewing a written decision by the Morongo Gaming Agency, the Tribal Court's review shall be based solely upon the factual record developed before the Gaming Agency. The Morongo Tribal Court shall review all questions of law *de novo* but shall not set aside any factual determination of the Gaming Agency 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 Morongo Tribal Court must accept the Gaming Agency's factual determination.

7.4.4. If the Morongo Tribal Court is not reviewing a written decision by the Morongo Gaming Agency, discovery shall be governed by California Code of Civil Procedure section 1283.05, and the Tribal Court's review shall be *de novo* as to factual and legal matters.

7.4.5. Resolution of a Patron Claim by the Morongo Tribal Court shall be final and not subject to further appellate review in any forum.

7.4.6. The Tribal Court's resolution of a Patron Claim shall be at no cost to the patron, except that a patron shall be responsible for his/her attorneys' fees and other litigation costs associated with the pursuit of the Patron Claim.

7.5 Wavier of Sovereign Immunity as to Patron Claims. The Tribe waives its sovereign immunity and its right to assert sovereign immunity:

(A) in connection with the Morongo Gaming Agency's and Morongo Tribal Court's assertion of jurisdiction over a Patron Claim brought pursuant to this Section 7;

(B) in an action to enforce the Tribe's obligations in this Section 7; *and*

(C) in an action to enforce a judgment based upon an award issued under this Section 7, *provided* that the only tribal assets that may be levied upon in satisfaction of a Patron Claim award shall be the Gaming Operation's accounts, and not the Tribe's government accounts.

SECTION 8. TORT CLAIMS.

8.1. Filing a Tort Claim.

8.1.1. Deadline for Filing a Tort Claim. A person must file a Tort Claim within the time period applicable for the filing of claims for money damages against public entities under California Government Code section 810 *et seq.* A Tort Claim that does not satisfy the content requirements of subsection 8.1.3 shall not be deemed a timely filed claim, and must be resubmitted in compliance with subsection 8.1.3 prior to the deadline for filing a claim. Absent a showing of good cause for filing a Tort Claim after the deadline, the failure to file a timely Tort Claim that complies with subsection 8.1.3 shall constitute a waiver of the right to pursue a Tort Claim against, or to recover compensation from, the Tribe, its officers, employees, or agents, in any federal, state, tribal, or arbitral forum based on the incident giving rise to the claim.

8.1.2. Where to Submit Tort Claims. Tort Claims must be submitted by personal delivery, certified U.S. Mail, or any other form of delivery by which a confirmation of receipt may be obtained, to the Morongo Tribal Court, ATTN: Clerk, 12700 Pumarra Road, Banning, CA 92220. A Claim not *received* by the Tribal Court on or before the deadline set forth in subsection 8.1.1. shall be deemed untimely.

8.1.3. Content of a Tort Claim. A Tort Claim need not conform to a particular format but must present all material facts relating to the incident and alleged injury, including the following:

(A) the name, mailing address, and telephone number of the Claimant and the Claimant's attorney, if any;

(B) the date, location, and a detailed account of the incident or occurrence that gave rise to the Claim, including an explanation of why the Tribe is at fault for the Claimant's injuries;

(C) the identity or description of all persons involved in the incident or occurrence that gave rise to the Claim;

(D) the identity or description of all witnesses to the incident or occurrence that gave rise to the Claim;

(E) a detailed statement of the nature and extent of the alleged injuries to Claimant's person or damages to Claimant's property; and

(F) the amount of money damages claimed and the basis for computing them.

A Tort Claim must be signed under penalty of perjury by the Claimant or Claimant's representative (who must provide documentation of his/her authority to act on the Claimant's

behalf), or, in the case of a person under the age of eighteen (18) years, the Claimant's parent or legal guardian.

8.2. Determination of Timeliness and Completeness. Within one (1) week of receipt of a Tort Claim, the Morongo Tribal Court shall determine whether the Claim has been timely filed in accordance with subsection 8.1.1 and complies with the content requirements of subsection 8.1.3.

8.2.1. Untimely or Incomplete Tort Claim. If the Morongo Tribal Court determines that a Tort Claim is untimely, the Court shall promptly notify the Claimant that the claim is untimely and thus may not be pursued in any forum. If the Tribal Court determines that a Tort Claim fails to comply with subsection 8.1.3, and the deadline imposed by subsection 8.1.1 for filing a claim has not passed, the Court shall notify the Claimant in writing of the ways in which the claim fails to comply with subsection 8.1.3 and of the deadline for filing a completed claim.

8.2.2. Stay of Tribal Court Proceedings; Referral to Gaming Agency. If the Morongo Tribal Court determines that a Tort Claim has been timely filed in accordance with subsection 8.1.1 and complies with the content requirements of subsection 8.1.3, then the Tribal Court action shall be stayed for up to one hundred eighty (180) days while the claim is referred to the Morongo Gaming Agency for review and possible resolution. The Tribal Court shall provide the Morongo Gaming Agency with a copy of all documentation submitted by the Claimant in connection with the Tort Claim. While the matter is pending before the Morongo Gaming Agency, the Gaming Agency shall have the right to request, and the Claimant shall be obligated to provide, copies of documents that are reasonably related to the Tort Claim, including, but not limited to, medical records and bills pertaining to the Claimant's alleged injuries, and records of Claimant's medical history. If the Tort Claim is not resolved to the Claimant's satisfaction within one hundred eighty (180) days of its referral to the Morongo Gaming Agency (unless that period is extended by the mutual agreement of the Claimant and the Tribe), the Gaming Agency shall notify the Tribal Court to lift the stay and the claim shall proceed in Tribal Court consistent with the terms of subsection 8.3.

8.3. Tribal Court Proceedings.

8.3.1. Discovery. Discovery in the Morongo Tribal Court shall be governed by procedures comparable to California Code of Civil Procedure section 1283.05, provided that nothing shall prevent the parties from mutually agreeing to deviate from section 1283.05 subject to the prior approval of the Tribal Court.

8.3.2. Applicable Law. The law applicable to the resolution of Tort Claims shall be the statutory and decisional law of the State of California applicable to claims of bodily injury, personal injury, or property damage, provided that California law shall not expand the class of claims to which the Tribe has waived its sovereign immunity nor the limitations on the Tribe's waiver of immunity.

8.4. Appeals from the Tribal Court.

8.4.1. Deadline for Filing of an Appeal. Any party that chooses to appeal the decision or award of the Morongo Tribal Court must file a notice of appeal within thirty (30) days of receipt of the Tribal Court's decision.

8.4.2. Where to File an Appeal. A notice of appeal must be submitted by personal delivery, certified U.S. Mail, or any other form of delivery by which a confirmation of receipt may be obtained, to the Morongo Tribal Court, ATTN: Clerk, 12700 Pumarra Road, Banning, CA 92220. A notice of appeal not *received* by the Tribal Court on or before the deadline set forth in subsection 8.4.1 shall be deemed untimely, and shall constitute a waiver of the right to appeal absent a show of good cause for the late filing.

8.4.3. Morongo Tribal Appellate Court. Appeals shall be heard by the Morongo Tribal Appellate Court except as provided below. The Tribal Appellate Court's review shall be based solely upon the record developed in the Morongo Tribal Court. The Tribal Appellate Court shall review *de novo* 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 factual determination in question of the Tribal Court shall not be overturned on appeal. The Claimant shall not be subject to any filing fees associated with the pursuit of his/her appeal in the Tribal Appellate Court, though the Claimant shall be responsible for his/her own attorneys' fees and other litigation costs.

8.4.4. JAMS Appellate Forum. If the Tribe does not have an appellate court or if the Morongo Tribal Appellate Court is not able to hear the appeal, an appeal of a Morongo Tribal Court decision shall be processed by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to the JAMS Optional Arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent), subject to the following conditions:

(A) A JAMS appeal shall take place in Riverside or San Bernardino County and shall use one (1) arbitrator agreed upon by the parties.

(B) A JAMS appeal shall be based solely upon the record developed in the Morongo Tribal Court. The JAMS arbitrator shall review *de novo* all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations 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 factual determination of the Tribal Court shall not be overturned on appeal.

(C) The cost and expense of the JAMS appeal shall be initially borne equally by the Tribe and the Claimant, with both parties timely paying their share of the JAMS appeal costs as those costs are billed by JAMS. Nevertheless, the JAMS arbitrator shall award costs and expenses (but not attorneys' fees) to the prevailing party. If the Tribe prevails in a JAMS appeal, and the JAMS arbitrator determines that the appeal was without substantial merit, the JAMS

arbitrator shall order the Tribe's costs and expenses to be paid by the Claimant and Claimant's counsel, jointly and severally.

8.5. Waiver of Sovereign Immunity as to Tort Claims. Subject to the conditions set forth in this Section 8, the Tribe waives its sovereign immunity and its right to assert sovereign immunity with respect to the resolution of Tort Claims in the Morongo Tribal Court and on appeal to the Morongo Tribal Appellate Court or JAMS, as the case may be. The Tribe's waiver of sovereign immunity shall permit a Claimant to enforce the Tribe's obligations under this Section 8 and to enforce or execute a judgement against the Gaming Operation based on an award of the Tribal Court or, if applicable, the Tribal Appellate Court or JAMS. The Gaming Operation shall comply with a final award of the Tribal Court, the Tribal Appellate Court, or JAMS, as the case may be. Notwithstanding the foregoing, the Tribe does not waive its immunity to any portion of a Tort Claim or award that exceeds the greater of Ten Million Dollars (\$10,000,000) or the limits of the general commercial liability insurance policy required by the Compact.

SECTION 9. ACCEPTANCE OF AWARD OR SETTLEMENT.

The acceptance of any award, determination, or settlement by a person pursuing a Tort Claim or Patron Claim shall be final and conclusive on that person, his/her heirs, and his/her assigns, and said acceptance shall constitute a waiver of any present or future claim against the Tribe and any of its officers, employees, or agents arising from the same or related circumstances giving rise to the claim in question.

SECTION 10. SEVERABILITY.

The provisions of this Ordinance are severable. If any Section or provision of this Ordinance is ruled to be invalid by a court or agency of competent jurisdiction, the remaining provisions shall remain in full force and effect.

SECTION 11. EFFECTIVE DATE.

Following the approval of this Ordinance by the Tribe's General Membership, this Ordinance shall be deemed to have taken effect on the date that notice is published in the Federal Register that the Compact has been approved or is deemed to have been approved by the Secretary of the Interior. From that date forward, this Ordinance shall govern all Tort and Patron Claims based upon incidents occurring on or after the effective date of this Ordinance. Any Tort Claim or Patron Claim based upon an incident occurring prior to the effective date of this Ordinance shall be subject to the substantive provisions of the Tribe's Tort Liability and Patron Claims Ordinance in effect on the date of the underlying incident

SECTION 12. AMENDMENT.

Except as expressly provided in this paragraph, the Tribal Council shall be vested with full authority to amend this Ordinance as may be necessary or desirable to improve the efficiency of the Tribe's Tort and Patron Claim processes, to ensure compliance with any new or amended Class III gaming compact(s) to which the Tribe may in the future become a party, or to come into or remain in compliance with any applicable laws or regulations, so long as any such amendment does not render the Ordinance out of compliance with the compact(s) then in effect. Notwithstanding the foregoing, the Tribal Council shall have no authority to grant any additional or expanded consent to suit on any claim or in any forum beyond that authorized in this Ordinance without an express additional delegation of authority from, or ratification by, the General Membership, and any such purported grant of any additional or expanded consent shall be deemed to be an *ultra vires* act that shall not be binding on the Tribe.

SECTION 13. EXPIRATION; REPEAL.

13.1. This Ordinance shall automatically cease to be in effect without further action by the Tribe or its membership upon the expiration of the Compact, any future amendment of the Compact that renders this Ordinance no longer necessary, or a change in law that eliminates the need for a tribal-state compact to conduct Class III gaming. The expiration, repeal, or other termination of the effectiveness of this Ordinance shall not affect any claim that may be pending or that arose while this Ordinance was in effect.

13.2. If a court of competent jurisdiction enters a provisional order or judgment that for any reason prevents the Compact from taking effect, the operative effect of this Ordinance shall be suspended as long as said provisional judgment remains in effect. Upon entry of a final judgment that allows the Compact to take effect, the operative effect of this Ordinance shall be reinstated as of the date of entry of said final order or judgment.

13.3. A final ruling by a court or agency of competent jurisdiction that the Compact is invalid shall have the effect of automatically repealing this Ordinance without further action by the Tribe or its membership and substituting in its place the Morongo Tort Liability and Patron Claims Ordinance that was in effect immediately prior to the adoption of this Ordinance.