

CHAPTER 2. TORT LIABILITY FOR TRIBAL GAMING OPERATIONS

The Tribal Council of the Smith River Rancheria, empowered by the Tribal Constitution to enact ordinances, hereby ordains the following:

§1. Findings and Declarations

The Smith River Rancheria finds and declares that -

- a. Gaming provides economic development opportunities and a source of revenue for the Smith River Rancheria and its members.
- b. On September 10, 1999, the Smith River Rancheria and various other Indian tribes entered into a Tribal-State Gaming Compact with the State of California in furtherance of Indian gaming.
- c. The Tribal-State Gaming Compact requires the Smith River Rancheria to adopt a tort liability ordinance to provide for the processing of patron claims.

Therefore, the Tribal Council adopts this Ordinance to comply with the Tribal-State Gaming Compact and to protect and promote the political integrity, economic security, health, safety and welfare of the Tribe, its members, and all persons living on, or passing through, the Smith River Rancheria.

§2. Definitions

For the purposes of this ordinance, the following words shall have the following meanings:

- a. The term "Tribal Council" means the Tribal Council of the Smith River Rancheria.
- b. The term "Class III gaming" means the forms of Class III gaming defined as such in 25 U.S.C. Section 2703(8) and by regulations of the National Indian Gaming Commission.
- c. The term "Gaming Activities" means the Class III gaming activities authorized under the Tribal-State Gaming Compact as defined in Section 2.4 therein.
- d. The term "Gaming Facility" means any building in which Class III gaming activities or gaming operations are offered by the Tribal Gaming Operation within the boundaries of the Smith River Rancheria.

- e. The term "patron" means an individual who uses the services of the Tribal Gaming Operation.
- f. The term "patron claims" means a claim, made in conformance with the procedures set forth in this Ordinance, for money damages resulting from injuries to person or property at the Gaming Facility or in connection with the Tribal Gaming Operation.
- g. The term "Smith River Rancheria" means all land, air, and water located within the exterior boundaries of the Smith River Rancheria.
- h. The term "State" means the State of California or any administrative agency thereof.
- i. The term "Tribal Gaming Operation" means the business enterprise of the Smith River Rancheria that offers and operates Class III gaming activities, whether exclusively or otherwise, within the boundaries of the Smith River Rancheria.
- j. The term "Tribal-State Gaming Compact" means the Compact entered into between the State of California and the Smith River Rancheria and various other federally recognized on September 10, 1999 pursuant to the Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166, et seq. And 25 U.S.C. Sec. 2701, et seq.)
- k. The term "Tribe" means the Smith River Rancheria, a federally recognized Indian tribe.

§3. Applicability of Ordinance

This Ordinance applies solely to the Tribal Gaming Operation and activities occurring within the Gaming Facility.

§4. Public Liability Insurance

The Tribe shall carry no less than five million dollars (\$5,000,000) per year in public liability insurance for patron claims. At its discretion, the Tribal Council may delegate this requirement to the Tribal Gaming Operation.

§5. Procedure for Processing Patron Claims

- a. All patron claims shall be handled by the company providing the Tribe the public liability insurance described above, except that the Tribal Gaming Operation has the discretion to resolve patron claims up to the amount of the deductible under the Tribe's public liability insurance policy, at its sole

discretion and in compliance with any requirements of the Tribe's public liability insurance policy.

- b. In cooperation with the company providing the Tribe the public liability insurance described above and subject to the limits of the public liability insurance policy, the Tribe shall provide reasonable assurances that patron claims will be promptly and fairly adjudicated, and that legitimate claims will be paid.

§6. Sovereign Immunity

- a. Except as set out in sub-section (b) below, the sovereign immunity of the Tribe is in no manner waived by this Ordinance or by any action of the Tribal Council or staff of the Tribe acting pursuant to this Ordinance, even though Section 6.4.2(d) of the Tribal-State Gaming Compact requires the Tribe to carry public liability insurance.
- b. In its sole discretion and subject to the conditions and limitations described herein, the Tribal Council may waive the Tribe's sovereign immunity from suit, by express written authorization, solely to the extent of the limitations of the public liability insurance policy purchased by the Tribe in conformance with this Ordinance.
 - (i) To request a waiver of the Tribe's sovereign immunity from suit for a patron claim, the patron must take the following actions:
 - (1) The patron allegedly suffering the injury to person or property must present the patron claim, in detail and in writing, to the Tribal Council, which shall have thirty (30) days to either
 - (a) waive the Tribe's sovereign immunity from suit, by express written authorization and under the conditions described in this section, or
 - (b) refuse to waive the Tribe's sovereign immunity from suit.
 - (2) A failure by the Tribal Council to take any action on the patron claim within thirty(30) days shall be automatically deemed to be a refusal to grant a waiver of the Tribe's sovereign immunity from suit.
 - (ii) The Tribal Council may only grant a waiver of sovereign immunity by express written authorization in conformance with the Tribal Council's established procedures for taking action.
 - (iii) Any waiver of sovereign immunity granted by the Tribal Council under this section shall be subject to the following conditions, in addition to any other conditions that the Tribal Council may add:
 - (1) The claim must be made by the patron allegedly suffering the injury to person or property and not by any

representative, agent, partner or other entity of or connected with the patron allegedly suffering the injury to person or property, or by any other person, corporation, partnership, or entity.

- (2) The patron allegedly suffering the injury to person or property must follow all claims procedures established by the Tribe and the company providing the Tribe's public liability insurance.
- (3) Any such waiver of sovereign immunity shall be strictly limited by and to the terms and conditions of the Tribe's public liability insurance purchased in conformance with this Ordinance.
- (4) Any such waiver of sovereign immunity shall be limited to patron claims, as this term is defined in this Ordinance.
- (5) The claim must seek monetary damages. Any waiver granted pursuant to this section shall not be effective as to any patrons or other persons seeking specific performance, injunctive relief, declaratory relief, and/or any other forms of relief other than monetary damages.
- (6) The claim must be made in
 - (a) any judicial forum or other dispute resolution system established by the Tribe,
 - (b) the U.S. District Court for the Northern District of California in San Francisco, California, or
 - (c) the Superior Court for the State of California for the County of Del Norte County in Crescent City, California.

§7. Effect of Ordinance on Other Tribal Ordinances

This Ordinance supercedes any conflicting or contrary superceding ordinances passed by the Tribe.

§8. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, its invalidity does not affect other provisions or applications of this Ordinance, and to this end the provisions of this Ordinance are severable.

§9. Amendments

This Ordinance may be amended at any time by the Tribal Council.

§10. Effective Date

This ordinance shall take effect immediately upon passage.

§11. Legislative History

This Chapter was adopted on August 8, 2000, as the Smith River Rancheria Ordinance on Tort Liability for Tribal Gaming Operation (Ordinance No. 00-02).