

THIRD AMENDED TRIBAL TORT CLAIMS ORDINANCE

SYCUAN BAND OF THE KUMEYAAY NATION

BE IT ENACTED BY THE SYCUAN BAND OF THE KUMEYAAY NATION AS FOLLOWS:

I. TITLE.

This Ordinance shall be entitled the “Sycuan Band of the Kumeyaay Nation Tribal Tort Claims Ordinance.”

II. FINDINGS.

A. The success of the Gaming Operation of the Sycuan Band of the Kumeyaay Nation (“Tribe”) relies on the trust and confidence of its patrons.

B. The Tribe endeavors to take all reasonable precautions to protect the health, safety and welfare of visitors and patrons of the Gaming Facility, but despite these efforts, accidents occasionally occur.

C. The Tribe desires to create a remedy by which any person who is injured at or in connection with the operation of the Tribal Gaming Operation or Gaming Facility as a result of the negligent act or omission of any officer, employee, or agent of the Tribe may be made whole; provided, however, that no claim for punitive damages or attorneys’ fees may be asserted.

III. 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 solely for claims seeking money damages resulting from injuries to person or property at the Tribe’s Gaming Facility or in connection with the Tribe’s Gaming Operation.

B. To establish time limits, substantive standards and procedures for the filing and prompt and fair adjudication of any claims against the Tribe for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful acts of any Tribal official, agent or employee on the premises of the Tribe’s Gaming Facility or in connection with the Tribe’s Gaming Operation, and to assure prompt payment of claims determined to be legitimate.

C. To delegate to the Business Committee the authority to retain the services of a Claims Administrator to investigate, evaluate, negotiate and determine the resolution of claims, to advise the Business Committee regarding claims and to assist in the

representation of the Tribe in mediations, hearings and appeals associated with contested Claims.

D. To repeal and supersede all previous tort claims ordinances enacted by the Tribe.

IV. DEFINITIONS.

A. "Award" is the financial remedy offered a Claimant to resolve a Certified Claim timely filed under this Ordinance.

B. "Business Committee" is the elected body of the Sycuan Band of the Kumeyaay Nation to which the Sycuan General Council has delegated the authority to enact and implement this Ordinance; provided, however, that for the purposes of this Ordinance, the Business Committee may delegate the performance of its administrative duties hereunder to the Claims Administrator.

C. "Certified Claim" is a Claim that the Claims Administrator, has certified as complying with all procedural and substantive requirements of this Ordinance.

D. "Claim" is the written document, together with supporting information and documentation submitted by a Claimant seeking redress for a Compensable Injury to person or property.

E. "Claimant" is the individual who submits a Claim to the Claims Administrator.

F. "Claims Administrator" is the person or entity designated or retained by the Business Committee to receive, investigate, evaluate, negotiate and determine the resolution of Claims filed under this Ordinance, to assist the Tribe's representatives in mediations, hearings and appeals associated with contested Claims, and to advise the Business Committee in the final disposition of Claims.

G. "Compensable Injury" is an injury to person or property that occurs on the premises of the Tribe's Gaming Facility or in connection with the Tribe's Gaming Operation, the proximate cause of which was the negligent or intentional act of a Tribal official, agent or employee. "Compensable Injury" does not include any injury allegedly sustained by a Tribal official, agent or employee in connection with his/her employment or performance of official duties, any injury allegedly sustained by a Tribal member or any person eligible for enrollment in the Tribe, any claim for punitive damages, 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 a Tribal official(s), employee(s) or agent(s) whose act(s) or omission(s) proximately caused or contributed to the cause of the injury, or any injury proximately caused by the act or omission of any person who is not an officer, employee or agent of the Tribe or who is not otherwise directly subject to the Tribe's direction, supervision or control. For the purposes of this

Ordinance, a Claim may not be certified if the person or entity alleged to have been the proximate cause of a Compensable Injury was not, at the time the injury was sustained, an elected or appointed official, employee or agent of the Tribe (not including an independent contractor). The Tribe specifically disclaims, and shall not be liable or responsible for, any acts or omissions committed by any patron of a Tribal Gaming Facility. Further, any and all claims for work-related injuries to employees are subject solely to the Tribe's system of insurance and self-insurance for work-related injuries and the policies and procedures developed for work-related injuries and are explicitly excluded from this Ordinance and the procedures set forth herein.

H. "Gaming Facility" is any building in which Class III gaming activities or gaming operations occur on Indian lands over which the Tribe exercises jurisdiction.

I. "Gaming Operation" is any business enterprise owned by the Tribe that offers and operates Class III gaming activities on Indian lands over which the Tribe exercises jurisdiction.

J. "Judgment" is an order of the Sycuan Tribal Court or the Intertribal Court of Southern California Court of Appeals.

K. "Rejected Claim" is a Claim that the Claims Administrator declines to certify because Claimant has failed to comply with one or more procedural requirements as provided herein, including deadlines for filing Claims or the provision of sufficient information or supporting documentation.

L. "Sycuan Indian Reservation" is all those lands within the exterior boundaries of the Sycuan Indian Reservation in San Diego County, California, and such other lands as hereafter may be acquired for the Tribe by the United States of America.

M. "Tribe" is the Sycuan Band of the Kumeyaay Nation, the federally-recognized Indian tribe with jurisdiction over the Sycuan Indian Reservation.

N. "Tribal Gaming Agency" means the Sycuan Gaming Commission or such other Tribal government agency as may be designated by the Business Committee to implement and ensure compliance with certain laws applicable to the Gaming Operation, including the provisions governing the processing and resolution of patron tort claims set forth in this Ordinance.

V. COVERED CLAIMS AND EXCLUSIONS.

A. This Ordinance creates both procedures and substantive rights or causes of action for redress of damage to or loss of property, personal injury or death occurring on the premises of the Tribe's Gaming Facility or in connection with the Tribe's Gaming Operation, caused by the negligent or intentional act(s) or omission(s) by an officer, employee or agent of the Tribe (not including an independent contractor). Only those substantive rights or 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.

B. 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 on or near any property owned by the Tribe of persons who are not officers, employees or agents of the Tribe.

C. 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 Tribe's 2015, Tribal-State Gaming Compact.

D. This Ordinance does not provide any remedy or forum for alleged injuries 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.

E. 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.

F. This Ordinance does not provide any remedy for alleged damages or injuries arising from a misrepresentation by an officer, employee, or agent of the Tribe unless such misrepresentation was a result of actual fraud, corruption, or malice, and the Claimant reasonably relied upon such misrepresentation to his/her detriment.

G. This Ordinance does not provide any remedy or forum for alleged injuries to employees, arising from or related to an employee's work.

H. This Ordinance does not provide any remedy or forum for alleged employment discrimination, arising from or related to an employee's work.

I. This Ordinance does not provide any remedy or forum for alleged injuries or damages sustained more than one hundred and eighty (180) days prior to the filing of a Claim.

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

K. This Ordinance does not provide any remedy for alleged injuries resulting from any act or omission of an officer, employee, or agent that was the result of the good faith exercise of the discretion vested in him or her, or a result of the good faith execution or enforcement of any Tribal, federal, or California ordinance, resolution, law, or rule.

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

VI. TRIBAL DISPUTE PROCESS.

A. Notice. Upon receipt of notice of a claim of injury covered by this Ordinance the Tribe shall provide notice that the Claimant is required within one hundred eighty (180) days to first exhaust the Tribal Dispute Process as set forth in this Article VI. Claimant shall be informed that failure to exhaust the Tribal Dispute Process will result in the Claimant's forfeiture of further rights to pursue a claim under this Ordinance. Such notice shall be delivered via personal service or certified mail, return receipt requested.

B. Presentation and Contents of the Claim. A Claimant or his or her legal representative must file a written Claim presenting all material facts relating to the alleged incident and injury. Upon request to the Sycuan Casino Safety and Claims Department, a Claim form will be provided, along with instructions for its completion and submission, but a Claimant need not use that form so long as all of the information required by that form is provided. At a minimum, the written Claim must contain the following:

- (1) The name, mailing address, and telephone number of the Claimant.
- (2) The date, location, and detailed account of the alleged incident or occurrence that gave rise to the Claim.
- (3) The identity or description of all persons involved in the incident or occurrence that gave rise to the Claim.
- (4) The identity or description of all witnesses to the incident or occurrence that gave rise to the Claim.
- (5) A detailed description of the alleged damage or injury suffered by the Claimant.
- (6) The specific amount of compensation sought by the Claimant 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 and documentation to support or justify the amount sought.
- (7) All supporting documentary evidence and written witness statements on which the Claimant intends to rely.
- (8) 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.

In the event that the Claimant does not possess complete information about the Claim when the Claim is presented, the Claim shall identify the information that Claimant lacks, set forth the reason(s) why the information cannot be presented with the initial submission of the Claim and request that the Claimant's time to complete submission of the Claim be extended by the amount of time, not to exceed one hundred eighty (180) calendar days from the date of receipt of the written notice provided pursuant to Section VI. A.

C. Time Limits on Filing Claim. To be timely submitted, the Claim must be received by the Claims Administrator, or such other person or entity as the Business Committee may designate, no later than one hundred eighty (180) calendar days after the alleged incident or occurrence. If the one hundred eightieth (180th) day falls on a Saturday, Sunday, or officially-recognized federal or Tribal holiday, the deadline shall be deemed to be the next business day. This time limit is jurisdictional and shall be strictly construed to preclude late-filed Claims.

D. Amending and Supplementing Claims. At any time after submission of a Claim but prior to the expiration of one hundred eighty (180) calendar days from the date of receipt of the written notice provided pursuant to Section VI. A., Claimant may supplement or amend the Claim without having to obtain the Tribe's consent, but only if the amendment relates to the same transaction or occurrence that gave rise to the original Claim.

E. Burden of Proof. The Claimant bears the burden of providing sufficient information and documentation to prove by a preponderance of evidence both that the Tribe is liable for the Claimant's injuries and the compensation due, in accordance with this Ordinance.

F. Certification or Rejection of Claims.

(1) Within thirty (30) calendar days of the receipt of a Claim, the Claims Administrator shall determine whether:

(a) the Claim was received within one hundred eighty (180) calendar days of the alleged incident or occurrence;

(b) the Claim as presented substantially complies with the content requirements described in Section VI. A above and is signed under penalty of perjury;

(c) the incident or occurrence alleged by the Claim occurred on the premises of the Tribe's Gaming Facility or in connection with the Tribe's Gaming Operation;

(d) the alleged injury or damage may have been the proximate result of a negligent or wrongful act or omission of any officer, employee, or agent of the Tribe, or such act or omission may have been a contributing cause of the alleged injury or damage; and

(e) the Claim seeks a remedy created by and available under this Ordinance.

These determinations shall be made solely for the purpose of determining whether to certify the Claim for further proceedings, and shall not constitute a determination of the merits of the Claim. Additionally, the Claims Administrator shall notify the Tribal Gaming Agency of each Claim and shall provide information as requested.

(2) If a Claim meets all of the requirements listed in Section VI. above, the Claims Administrator shall certify the Claim. Within thirty (30) days after determining a Claim is eligible for certification, the Claims Administrator shall send to Claimant a written "Certification of Claim." The Claims Administrator shall then undertake an investigation of the Claim.

(3) In the event the Claims Administrator determines that a timely filed Claim contains incomplete information or is missing any of the items required by Section VI. above, the Claims Administrator shall notify Claimant in writing that the Claim is incomplete and shall identify the information and any documentation that Claimant must provide in order to present a complete Claim. Claimant shall be given at least twenty (20) business days from the date of notification to provide the requested information.

(4) If the Claims Administrator does not receive the requested information within the time provided, or if the Claim for other reasons does not comply with the requirements of section VI. A. above, it will be rejected. In such case, the Claims Administrator shall send to the Claimant, within thirty (30) days of its determination, a written "Rejection of Claim" stating all grounds for this action and informing Claimant of his or her right to appeal to the Sycuan Tribal Court, in accordance with the provisions of Section VII. A. below, the Claims Administrator's decision to reject the Claim.

G. Claim Investigation.

(1) For each Claim that is certified, the Claims Administrator, in coordination with the Sycuan Casino Safety and Claims Department, shall investigate the matter to determine the validity of the Claim and the amount of any legitimate damages. In the absence of extraordinary circumstances such as the unavailability of witnesses, unresolved medical issues or non-cooperation of repositories of information, investigation of the Claim should be concluded within one hundred eighty (180) days from the date of receipt of the written notice provided pursuant to Section VI. A.

(2) If, during the course of the investigation, the Claims Administrator determines that additional evidence or documentation is necessary, the Claims Administrator shall mail Claimant or his/her legal representative a request for any such additional supporting evidence or documentation. Any such notice shall provide the Claimant at least twenty (20) business days to respond. The Claimant may request a reasonable extension of time to provide the requested evidence or documentation. If the Claims Administrator does not receive the requested evidence or documentation within the time provided, the Claim shall be considered abandoned and, on this basis will be automatically denied. No award shall be made on an abandoned claim. The Claims Administrator shall send to the Claimant, within thirty (30) days of making the determination of abandonment, written notice of denial of the Claim that describes the grounds for the decision and informs the Claimant of his or her right to appeal the decision to the Sycuan Tribal Court in accordance with Section VII. A. below.

H. Claim Resolution.

(1) After conclusion of an investigation, the Claims Administrator shall determine whether the Claim has merit and warrants an Award or whether the Claim should be denied, keeping in mind that the Claimant has the burden of proving by a preponderance of the evidence that the Tribe is liable and the amount of damages. Prior to issuing a formal written decision, the Claims Administrator shall first attempt to resolve the matter through informal negotiation and, if agreed upon by both parties, through mediation.

(2) If the parties agree to mediate, the Claims Administrator shall, within thirty (30) days of such agreement, select a neutral third-party mediator and, contingent upon mediator availability, mediation shall begin no later than thirty (30) days after selection of the neutral. Each party shall pay half of the cost of the mediator and related services and bear its own costs and attorney fees.

(3) If informal negotiations and dispute resolution efforts fail to resolve the Claim, and the Claims Administrator determines the Claim is without merit, the Claims Administrator shall deny the Claim and within thirty (30) days after reaching its decision inform the Claimant in writing that the Claim is denied, describing all grounds for that decision, and informing the Claimant of his or her right to appeal the decision to the Sycuan Tribal Court in accordance with Section VII. A. below.

(4) If the Claims Administrator determines a Claim is valid, the Claims Administrator shall be authorized to enter into a binding settlement or render a final decision and issue an award of up to one hundred thousand dollars (\$100,000), which settlement or decision shall be binding on the Tribe and its insurer.

(5) If the Claims Administrator determines a Claim is valid and reaches agreement with the Claimant or independently determines an appropriate award that exceeds one hundred thousand dollars (\$100,000), the Claims Administrator shall

notify the Business Committee and provide an opportunity for the Business Committee to review the matter and provide input on or object to the award.

(6) If the Claims Administrator determines a Claim is valid but is unable to reach agreement with the Claimant regarding the amount of any award, the Claims Administrator shall issue a written decision, describing all grounds for that decision, including the amount of its proposed award. The Claims Administrator shall inform the Claimant of his or her options either to accept the stated award as full and final settlement of the Claim or to reject the proposed award and appeal the decision to the Sycuan Tribal Court in accordance with Section VII. A. below.

(7) The Business Committee or its designee shall establish policies and procedures governing the processing of Claims under this Ordinance, as well as documentation the Claims Administrator must maintain with respect to each Claim.

VII. APPEALS FROM TRIBAL DISPUTE PROCESS.

A. Sycuan Tribal Court.

- (1) A Claimant may appeal to the Sycuan Tribal Court the Claims Administrator's rejection of a Claim on procedural grounds; the denial of a Claim on the merits; or the amount of an Award. However, the Sycuan Tribal Court shall have no jurisdiction over any Claim brought pursuant to this Ordinance until the one hundred eighty first (181st) day after Claimant's receipt of notice provided pursuant to Section VI. A. or until the Tribal Dispute Process described in Article VI. of this Ordinance has been exhausted, whichever is earlier. Provided, that the parties may mutually agree to a longer period in which to conclude the Tribal Dispute Process.
- (2) To initiate an appeal, Claimant must, within thirty (30) days of Claimant's receipt of the Claims Administrator's decision, submit to the Sycuan Tribal Court ("Court") a written notice of appeal and shall serve such notice on the Claims Administrator. The Claimant shall bear no filing fees or costs other than attorney fees and expenses in connection with filing an appeal in the Sycuan Tribal Court.
- (3) Upon receipt of an appeal notice the Claims Administrator shall compile and provide to the Court a copy of the Claim file.
- (4) Appeals taken pursuant to this Section VII. shall be conducted in accordance with the Intertribal Court of Southern California Code of Civil Procedure. No judgment may exceed ten million dollars (\$10,000,000.) and the Court shall have no authority to award attorneys fees or costs.

B. Intertribal Court of Southern California Court of Appeals.

- (1) Any party dissatisfied with the judgment of the Sycuan Tribal Court may, at the party's election, within thirty (30) days of receipt of the Sycuan Tribal Court decision, appeal the judgment to the Intertribal Court of Southern California Court of Appeals, provided that the party making such election must bear all costs and expenses associated with the appeal, regardless of the outcome.
- (2) The Intertribal Court of Southern California Court of Appeals shall review all determinations of the Sycuan Tribal Court on matters of law, but shall not set aside any factual determinations, if such determinations are supported by substantial evidence. The Intertribal Court of Southern California Court of Appeals shall have no authority to award attorneys' fees, costs or lower court costs or fees.
- (3) The decision of the Intertribal Court of Southern California Court of Appeals shall be final and not subject to further appeal.

VIII. APPLICABLE LAW.

The Tribe has adopted California tort law to govern all claims of bodily injury, personal injury or property, arising under this Ordinance. Provided, that California law, governing punitive damages is expressly not adopted by the Tribe.

IX. PAYMENT AND FINALITY.

A. The Tribe shall not be obligated to pay any Award or Judgment that is not covered by, or exceeds the policy limits of, the Tribe's liability insurance; provided, that the Tribe shall be obligated to pay any portion of an Award or Judgment that is subject to a self-insured deductible. The Tribe's insurer shall pay any cognizable Award or Judgment in the same manner and at the same time as judgments rendered in the courts of the United States. Awards or Judgments shall be paid within thirty (30) days after becoming final and unappealable; if an appeal is filed, payment shall be deferred until final disposition of the appeal, after which timely payment shall be made in accordance with such disposition.

B. Any Award, Judgment, compromise, settlement, or determination of a Claim under this Ordinance shall be final and conclusive on the Tribe, except when procured by means of fraud.

C. The acceptance by a Claimant of any Award, compromise, settlement, or Judgment on a Claim shall be final and conclusive on the Claimant and shall constitute a complete release of any present or future claim arising from the same or connected circumstances by the Claimant against the Tribe and its employees and agents whose act or omission gave rise to the Claim.

X. LIMITED WAIVER OF SOVEREIGN IMMUNITY.

The Tribe 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 Sycuan Tribal Court and the Intertribal Court of Southern California Court of Appeals pursuant to this Ordinance, and in any suit to enforce or execute a Judgment of the Sycuan Tribal Court or the Intertribal Court of Southern California Court of Appeals. Provided however, that this limited waiver shall not apply to punitive damages or for portions of a Claim or Judgment that exceed ten million dollars (\$10,000,000).

XI. EXCLUSIVE REMEDY.

This Ordinance provides the exclusive procedure, forum, and remedy for pursuit of claims for injury to or loss of property, personal injury or death. Except as expressly provided herein, this Ordinance does not constitute a waiver of the sovereign immunity of the Tribe or its officers, employees, and agents, and the Tribe reserves all rights for itself and its officers, employees, and agents not expressly waived by this Ordinance.

XII. EFFECTIVE DATE.

This Ordinance, as amended, shall be effective upon adoption by Tribal resolution and publication of the 2015, Tribal-State Gaming Compact in the Federal Register. Upon the effective date of this Ordinance, all previous ordinances permitting the filing of Claims against the Sycuan Band of the Kumeyaay Nation or its officers, agents or employees for injuries to persons or property shall be repealed and of no further force and effect; provided, that the provisions of this Ordinance, as amended, shall not apply to any Claim timely filed before the effective date of this Ordinance, as amended, but all Claims arising or filed on or after the effective date of this Ordinance, as amended, shall be subject to the procedural and substantive provisions of this Ordinance, as amended.