



# SUSANVILLE INDIAN RANCHERIA

## SUSANVILLE INDIAN RANCHERIA TRIBAL TORT ORDINANCE

### ORDINANCE NO. 2000-002 AMENDMENT 1

WHEREAS, the Susanville Indian Rancheria Gaming Enterprise, d.b.a. Susanville Casino, is a Gaming Operation within the meaning of the tribal-state compact executed between the Tribe and the State of California; and

WHEREAS, as a condition of the tribal-state compact, the Susanville Indian Rancheria has been required by the State to adopt a tort liability ordinance to resolve patron claims for money damages resulting from intentional or negligent injuries to persons or property at the Gaming Facility or in connection with the Tribe's Gaming Operation; and

WHEREAS, the Susanville Indian Rancheria Tribe (hereinafter "Tribe") is immune from suit except to the extent that immunity has been explicitly waived by this Ordinance, federal or tribal law; and

WHEREAS, the Tribal Business Council also recognizes that the Tribe relies upon the Gaming Facility to provide funding to support essential Tribal services and functions and that unlimited liability could disrupt the provision of such essential services and functions; and

WHEREAS, the Tribal Business Council, in order to provide an equitable policy, hereby adopts an amended Tribal Tort Ordinance which states the expressly limited circumstances under which a person may file a claim against the Gaming Operation for injuries; and

WHEREAS, this Ordinance does not constitute a general waiver of the Tribe's sovereign immunity. This Ordinance applies only to those activities undertaken by the Tribe or its employees and that occur at the Gaming Facility or by the Tribe's Gaming Operation. This Ordinance is to be strictly construed; and

WHEREAS, this Ordinance amends and supercedes Ordinance No. 2000-02;

NOW, THEREFORE, BE IT RESOLVED THAT the following is enacted as the amended Susanville Indian Rancheria Tribal Tort Ordinance.

**Section 1. Title.**

This Ordinance shall be known as the Susanville Indian Rancheria Tribal Tort Ordinance.

**Section 2. Definitions.**

Unless otherwise required by the context, the following words and phrases shall be defined as follows:

- a. "Gaming Facility" means the building in which the Tribe's Class III gaming activities or gaming operations occur, or in which the business records, receipts, or other 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 parking lots and walkways, a principal purpose of which is to serve the Class III gaming activities of the Tribe's Gaming Operation.
- b. "Gaming Operation" means the Susanville Indian Rancheria Gaming Enterprise, d.b.a. Diamond Mountain Casino, which is the business enterprise that offers and operates Class III Gaming Activities. If the Tribe changes the fictitious name under which it operates its Class III Gaming Activities, the term "Gaming Operation" will continue to apply to that enterprise.
- c. "Susanville Indian Rancheria" or "Tribe" means or refers to the federally recognized Indian Tribe of that name.
- d. "Susanville Indian Rancheria Tribal Business Council," "Tribal Business Council" or "TBC" means the governing body of the Susanville Indian Rancheria.
- e. "Tribal Agency" includes the Tribal Business Council, Tribal Development Committee, and corporations primarily acting as instrumentalities or agencies of the Susanville Indian Rancheria, but does not include any contractor with the Susanville Indian Rancheria.
- f. "Claim" means a petition for an award under this Ordinance. A claim may be filed with respect to any injury as defined in this Ordinance and that is expressly covered by the Class III liability insurance of the Tribe and only to the extent covered by the Class III Gaming insurance policy.
- g. "Person" means any individual, firm, partnership, corporation, or association.
- h. "Dangerous Condition" means a physical aspect of a facility or the use thereof that constitutes all of the following: (1) an unreasonable risk to human health or safety, (2) that is known to exist or that in the exercise of

reasonable care should have been known to exist and (3) the existence of which is proximately caused by the negligent act or omission of the Tribe in constructing or maintaining such facility. For the purposes of this subsection, a dangerous condition should have been known to exist if it is established that the condition had existed for such a period of time and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. A dangerous condition shall not exist solely because the design of any facility is inadequate or due to the mere existence of wind, water, ice or temperature by itself, or by the mere existence of a natural physical condition. Nothing in this Section shall preclude an accumulation of water, snow or ice from being found to constitute a dangerous condition when the Tribe fails to use existing means available to it for the removal of such accumulation and when the Tribe had notice of such accumulation and reasonable time to act.

- i. “Employee” means a part or full time employee of the Tribe’s Gaming Operation, when acting during the course and within the scope of their employment, whether with or without compensation. This term includes officers and directors of the Gaming Facility when they are acting to fulfill their duties to the Tribe’s Gaming Facility. This does not include agents or representatives of the United States or of the State of California or any of their political subdivisions or any official of the Tribe acting in any capacity other than fulfilling his or her duties to the Gaming Facility.
- j. “Injury” means death, harm to a person, or damage to or loss of property which, if inflicted by a person under California State law or Tribal law, would constitute a tort and which is expressly covered by the Class III Gaming liability insurance of the Tribe without regard to any deductible amount contained in the Class III Gaming insurance policy.
- k. “Insurance carrier” means the company that processes claims under the Tribe’s insurance policy or policies and which has been delegated responsibility by the underwriter for adjusting claims, including the evaluation of claims for possible settlement or defense.
- l. “Award” means money damages that are payable to compensate for any injury recognized under this Ordinance.
- m. “Actual Damages” means the ascertainable loss of money or property sustained as a result of an injury, provided that the Class III Gaming liability insurance of the Gaming Enterprise, without regard to any deductible amount contained in the Class III insurance policy, covers such injury.
- n. “Risk Manager” means the employee of the Gaming Operation who has been designated by the TBC to accept and process claims under this Ordinance and to undertake other duties as assigned to improve the safety of the

Gaming Operation and reduce the Tribe's potential liability for Injuries. The TBC may designate the General Manager of the Gaming Operation as the Risk Manager and authorize him to delegate those responsibilities to another casino employee, subject to his supervision.

**Section 3. Effective Date of Ordinance.**

This Ordinance shall become effective immediately upon approval by the Tribal Business Council.

**Section 4. Limited Waiver of Sovereign Immunity.**

- a. The sovereign immunity of the Tribe shall constitute a bar to any action or proceeding against the Tribe or its officers or employees, except to the extent that it is expressly and unequivocally waived by this Ordinance. Notwithstanding any provision herein to the contrary this Ordinance does not waive the sovereign immunity of:
  1. Tribal Business Council members for actions taken during the course of and within the scope of their duties as members of the Tribal Business Council;
  2. a tribal employee based upon an act or omission of the employee in the exercise of his or her discretion in performing under a tribal, federal, or state statute or regulation, whether or not such statute or regulation be valid, or the employee's discretion has been abused;
  3. any tribal official with respect to a claim arising out of the assessment or collection of any tax, or the detention of any goods or merchandise; and
  4. the Tribe or any officer or employee of the Tribe based on a claim arising outside of the Tribe's Gaming Facility or Gaming Operation
- b. The waiver of sovereign immunity only applies, if:
  1. The action is filed by the claimant and no other person or entity;
  2. The claimant has complied with the claim filing requirements in Section 8 of this Ordinance;
  3. An action is filed in the California state courts in Lassen County or another court, including a tribal court or an arbitrator, designated by resolution of the TBC; and

4. The action is filed within six months of the date a claimant is served with a notice denying the claim in accordance with Section 8.d, or within two years of the date a claim is deemed denied pursuant to Section 8.d, if the TBC fails to give the notice required by that section within 180 days after the claim was filed with the Risk Manager.
- c. The sovereign immunity of the Tribe is waived to the extent of the monetary policy limits and scope of coverage of the Tribe's Class III Gaming liability insurance, and only in the following instances:
  1. When the injuries alleged are proximately caused by the wrongful or negligent acts of the Tribe or employees of the Tribe arising out of the performance of their duties during the course and within the scope of their employment at the Tribal Gaming Facility or the Gaming Operation and only to the extent that the Injuries are covered by the Tribe's Class III Gaming insurance policy;
  2. When the injuries alleged have been proximately caused by a Dangerous Condition and are covered by the Tribe's Class III Gaming insurance policy.

**Section 5. Limitation on Awards.**

- a. No rule of law imposing absolute or strict liability shall be applied in any claim for injuries under this Ordinance.
- b. No award or other judgment imposing punitive, exemplary damages, or attorney's fees shall be applied in any claim for injuries under this Ordinance.
- c. No award for loss of consortium shall be applied in any claim for injuries under this Ordinance.
- d. No award for pain and suffering or mental anguish shall be applied except where such award does not exceed fifty percent of the actual damages sustained and provided that any such award is expressly covered by the Class III Gaming liability insurance of the Tribe without regard to any deductible amount contained in the Class III Gaming insurance policy.

**Section 6. Extent of Liability.**

In any claim, the Tribe and its officers and employees shall have no liability for Injuries, including damages, court costs, interest, and any other costs, in excess of the coverage limits provided for those Injuries under the Tribe's Class III Gaming insurance policy.

With respect to claims in excess of or outside the scope of coverage provided by the Class III Gaming liability insurance policy of the Tribe, the Tribe shall be entitled to

assert any defense based upon sovereign immunity which otherwise would have been available to the Tribe or the employee of the Tribe whose act or omission gives rise to the claim, as well as any other defenses to which the Tribe is entitled.

**Section 7. Notice Requirement.**

- a. A written notice filed with the Risk Manager by the claimant or the claimant's representative within 180 days after the claim accrues must precede claims brought under this Ordinance. Claims brought under this Ordinance shall be deemed to accrue on the date when the injury is sustained.
- b. The notice shall contain the following:
  1. The name and address of the claimant and the name and address of the claimant's attorney, if any;
  2. A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or condition complained of;
  3. The name of any employee involved, if known;
  4. A concise statement of the nature and extent of the injury claimed to have been suffered;
  5. A statement of the amount of monetary damages that is being requested.
- c. When the claim is one for wrongful death, the personal representative, surviving spouse, or next of kin of the deceased may present the notice.

**Section 8. Processing of the Claim.**

- a. Upon a claimant filing notice that complies with this Ordinance, the Risk Manager shall promptly transmit a copy of the claim to the Tribal Business Council, the tribal attorney, and the Tribe's Class III Gaming insurance carrier. The Tribe's Class III Gaming insurance carrier shall promptly investigate the claim and refer to claim for adjustment in accordance with its normal practice.
- b. Upon completion of its investigation and adjustment of the claim, the Tribe's insurance carrier will file its recommended disposition of the claim with the TBC. In no event shall the claim be rejected, settled or paid without the prior written approval of the TBC.

- c. The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim based on the occurrence causing the Injuries against the Susanville Indian Rancheria and against any employees of the Tribe whose acts or omission gave rise to the claim. Such a release shall be obtained from the claimant prior to the payment of the claim.
- d. An action may only be instituted against the Susanville Indian Rancheria for money damages for Injuries, if the claimant shall have first presented the claim as required by this Ordinance and his claim has been finally denied, in whole or in part, by the Tribal Business Council, in a writing which has been sent by certified or registered mail to the claimant. The failure of the Tribal Business Council to make final disposition of a claim within 180 days after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this Section.
- e. Action under this Section shall not be instituted for any sum in excess of the amount of the claim presented to Risk Manager, except where the increased amount is based upon newly discovered evidence not reasonably ascertainable at the time of presenting the claim, or upon allegation and proof of intervening facts, relating to the amount of the claim.
- f. Disposition of any claim by the Tribal Business Council shall not be competent evidence of liability or the amount of damages.

**Section 9. Exclusiveness of Remedy, Judgment as Bar.**

- a. The remedy against the Tribe provided for in this Ordinance for Injuries is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

**Section 10. Miscellaneous.**

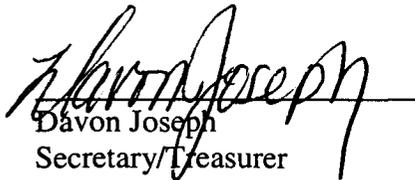
- a. In construing this Ordinance, the present tense includes the past and future tenses, and the future tense includes the present tense.
- b. When reference is made to any portion of this Ordinance, the reference shall apply to amendments made hereafter.
- c. All Tribal Ordinances or other laws inconsistent with this Ordinance are hereby repealed only to the extent that they are inconsistent with this Ordinance.

- d. Section headings shall be used only for reference to format and not in construing this Ordinance.
- e. The Tribe shall make this Tort Claims Ordinance available for review upon request to patrons of the Gaming Facility.

**CERTIFICATION**

We, hereby certify that the Susanville Indian Rancheria Amended Tribal Tort Ordinance was adopted by the Susanville Indian Rancheria Tribal Business Council at a duly called meeting held June 27, 2005 with a vote of 7 for, 0 against, 0 abstain.

ATTEST;

  
Davon Joseph  
Secretary/Treasurer

  
Stacy Dixon  
Tribal Chairman