

**TITLE 2 – GOVERNMENT ADMINISTRATION  
PART III – ENTERPRISE; FOUNDATIONS  
CHAPTER 3-1 – GAMING ENTERPRISE DIVISION**

**TABLE OF CONTENTS**

|                     |  |    |
|---------------------|--|----|
| Section 1           | Findings; Purpose .....                                      | 1  |
| Section 2           | Short Title; Codification .....                              | 1  |
| Section 3           | Title 7 Repealed Sections.....                               | 1  |
| Section 4           | Title 17 Repeals and Amendments .....                        | 2  |
| Section 5           | Title 7 Amendments.....                                      | 2  |
| <br>                |  |    |
| <b>SUBCHAPTER A</b> | <b>ESTABLISHMENT OF THE DIVISION</b>                         |    |
| Section 10          | Establishment.....   | 2  |
| Section 20          | Essential Function; Sovereign Immunity .....                 | 2  |
| Section 30          | Purpose  |    |
| <br>                |  |    |
| <b>SUBCHAPTER B</b> | <b>GENERAL AUTHORITIES, POWERS, OBLIGATIONS</b>              |    |
| Section 40          | General Powers .....   | 2  |
| Section 50          | General Authorities and Duties; Chief Executive Officer..... | 3  |
| Section 60          | Retained Authorities; Tribal Council .....                   | 3  |
| <br>                |  |    |
| <b>SUBCHAPTER C</b> | <b>FINANCIAL DUTIES AND RESPONSIBILITIES</b>                 |    |
| Section 70          | Standards of Conduct; Conflicts of Interest .....            | 4  |
| Section 80          | Accounts; Reports; Audits .....                              | 6  |
| Section 90          | Taxation .....   | 6  |
| Section 100         | Budgets .....  | 6  |
| Section 110         | Donations; Revenue Sharing.....                              | 6  |
| Section 120         | Distributions.....   | 6  |
| Section 130         | Tribal Expenditures.....                                     | 6  |
| Section 140         | Records Access .....   | 7  |
| <br>                |  |    |
| <b>SUBCHAPTER D</b> | <b>INDIAN PREFERENCE</b>                                     |    |
| Section 150         | Preference; Minimum Qualifications.....                      | 7  |
| Section 160         | Promotions; Internships .....                                | 7  |
| Section 170         | Indian Preference Employment Goals .....                     | 7  |
| <br>                |  |    |
| <b>SUBCHAPTER E</b> | <b>REPORTS TO THE COUNCIL</b>                                |    |
| Section 180         | General Reporting Requirements.....                          | 7  |
| Section 190         | Employment and Personnel Reports .....                       | 8  |
| Section 200         | Regulatory Reports .....                                     | 8  |
| Section 210         | Proposed Fiscal Year Budgets .....                           | 9  |
| <br>                |  |    |
| <b>SUBCHAPTER F</b> | <b>REGULATORY COMPLIANCE</b>                                 |    |
| Section 220         | Regulatory Compliance .....                                  | 9  |
| Section 230         | Division Policies and Procedures .....                       | 9  |
| Section 240         | Food Service Establishments .....                            | 9  |
| <br>                |  |    |
| <b>SUBCHAPTER G</b> | <b>TORT REMEDIES</b>   |    |
| Section 250         | Tort Remedies for Tribe’s Class II Gaming Facilities .....   | 10 |

**TITLE 2- GOVERNMENT ADMINISTRATION  
PART III – ENTERPRISE; FOUNDATIONS  
CHAPTER 3-1 GAMING ENTERPRISE DIVISION**

*Legislative History:       Adopted on April 27, 2004 by Resolution No. C04-45-04.  
                                  Amended and Codified on February 2, 2005 by Resolution No. C02-28-05  
                                  Amended and Recodified on October 24, 2005 by Resolution No. C10-404-05  
                                  and Ordinance 10-05.  
                                  Amended on April 9, 2008 by Resolution No. C04-67-08 and Ordinance No.  
                                  9-08.  
                                  Amended on December 3, 2008 by Resolution No. C12-272-08 and Ordinance  
                                  No. 38-08.*

**Section 1           Short Title; Codification (2 PYTC § 3-1-2)**

- (A)    This ordinance shall be known as the “Gaming Enterprise Division Amendments Ordinance of 2008.”
- (B)    This ordinance shall be codified, pursuant to the Codification Ordinance, in Title 2, Part III, Chapter 3-1.

**Section 3           Title 7 Repealed Sections (2 PYTC § 3-1-3)**

- (A)    The following Sections in Title 7 are hereby repealed:
  - (1)    Article Two, Section 2201-2203
  - (2)    Article Four, Sections 2401-04, 2406-07
  - (3)    Article Six, Section 2601
  - (4)    Article Seven, Section 2701
- (B)    The By-Laws of the Gaming Division Board of Directors, adopted by Resolution No. C04-46-04, are hereby repealed.

**Section 4           Title 17 Repeal and Amendments (2 PYTC § 3-1-4)**

- (A)    The following Sections in Title 17 are hereby repealed:
  - (1)    Section 1706(J); and
  - (2)    Section 1706(K)
- (B)    The following Sections in Title 17 are hereby amended:
  - (1)    Title 17, Section 1706(G) shall now read:  
          Gaming contracts not exceeding \$300,000; delegation of authority. The Chief Executive Officer (“CEO”) of the Gaming Enterprise Division, while otherwise acting within the scope of his authority, is hereby delegated the power to authorize procurements and execute contracts not exceeding \$300,000 in total value, subject to the other provisions of this section.
  - (2)    Title 17, Section 1706(H) shall now read:  
          The CEO may enter into a gaming contract contrary to the advice of the Office of the Attorney General only if the contract is approved by Tribal Council.

- (3) Title 17, Section 1706(L) shall now read:  
Gaming contracts exceeding \$300,000. All proposed gaming contracts with a total value greater than \$300,000 must be approved by Tribal Council resolution.

**Section 5 Title 7 Amendments (2 PYTC § 3-1-5)**

The Gaming Enterprise Division Ordinance is hereby amended to read as follows:

**SUBCHAPTER A ESTABLISHMENT OF THE DIVISION**

**Section 10 Establishment (2 PYTC § 3-1-10)**

There is established a Division of the Pascua Yaqui Tribe to be known as the Gaming Enterprise Division.

**Section 20 Essential Function; Sovereign Immunity (2 PYTC § 3-1-20)**

The Division is an integral part of the Pascua Yaqui Tribe (“Tribe”), organized to perform an essential governmental function of the Tribe subject to ultimate financial and management control by the Tribal Council of the Tribe. The Division accordingly has, in the exercise of the powers delegated to it by the Council, the full measure of the Tribe’s sovereign immunity, the Tribe’s exemption from federal and state taxation and the Tribe’s right to be treated as a state government for the purposes of Section 7871(a) of the Internal Revenue Code of 1986, as amended or recodified.

**Section 30 Purpose (2 PYTC § 3-1-30)**

The purpose of the Division is to manage and operate the Tribe’s Anselmo Valencia Amphitheater, Casino of the Sun, Casino del Sol, and additional gaming-related enterprises and to undertake such other responsibilities as may be assigned to it by Tribal Council resolution or ordinance. The Division shall be managed and operated in accordance with all applicable laws for the primary purposes of: (1) maximizing the distribution of net revenues to the Tribe to perform essential governmental functions; (2) employing enrolled members of the Tribe in all levels of the Division; (3) developing work skills for enrolled members of the Tribe; and (4) creating a premier gaming destination.

**SUBCHAPTER B GENERAL AUTHORITIES, POWERS, OBLIGATIONS**

**Section 40 General Powers (2 PYTC § 3-1-40)**

The Division shall have the power to manage and operate business enterprises and tribal assets assigned to the Division. The Division’s general powers, except those powers limited by or reserved to Tribal Council, include the power to:

- (A) Appoint officers and employees, define their duties, and fix their compensation
- (B) Implement policies related to personnel, employment, compensation, and operations practices;
- (C) Create business, operations, and human resource development plans to meet the strategic goals set for the Division;
- (D) Incur debt for the lease or purchase of equipment and give a security interest in the leased or purchased equipment or assets as collateral for such debt, provided however, that the power to create a security interest shall only be for a security interest in the equipment for which the debt was incurred;
- (E) Acquire or dispose of equipment and other Division assets;

- (F) Enter into contracts for goods and services, subject to other applicable laws or ordinances of the Tribe;
- (G) Invest and reinvest its funds; and
- (H) Exercise and have such other powers necessary or convenient to effect any or all of the business purposes of the Division.

**Section 50 General Authorities and Duties; Chief Executive Officer (2 PYTC § 3-1-50)**

The business affairs of the Division shall be managed by a Chief Executive Officer (“CEO”), who shall be responsible for the day to day operational management of the Division. The CEO shall report to the Tribal Council. The CEO shall supervise the businesses and employees of the Division, with the authority to:

- (A) Develop and implement business and operations plans to accomplish the Division’s strategic goals;
- (B) Hire and terminate the employment of any Division management or other employee in accordance with the personnel policies of the Division;
- (C) Develop and implement operational and management procedures for the efficient and productive operation of the Division;
- (D) Develop and recommend personnel policies, including a Code of Ethics for all employees, to the Tribal Council for approval;
- (E) Develop and implement, subject to TGO approval, internal controls, policies, and procedures that impact compliance with the Tribe’s Gaming Ordinance, and/or compliance with the Compact
- (F) Acquire or dispose of equipment or assets with a value not to exceed \$300,000, subject to Title 17;
- (G) Enter into contracts for goods and services with a value not to exceed \$300,000, subject to Title 17;
- (H) Enter into employment contracts with any Division employee with a total value, including benefits, not to exceed \$300,000, subject to approval of the Office of the Attorney General as to form;
- (I) Sign contracts, notes, bonds, or other instruments pertaining to the business of the Division, except when such authority is required by law to be exercised by another person;
- (J) See that all orders and resolutions of Tribal Council are carried into effect;
- (K) Perform other duties prescribed by Tribal Council or Tribal law.

**Section 60 Retained Authorities; Tribal Council (2 PYTC § 3-1-60)**

Tribal Council retains for itself the following authorities:

- (A) Approve the Division’s budget, investment, business and strategic plans;
- (B) Select, employ, and terminate a Chief Executive Officer;
- (C) Approve all employment contracts with any Division employee exceeding \$300,000 in total value.

- (D) Approve the Division's personnel policies;
- (E) Approve all major reorganizations of the Division;
- (F) Approve all equipment and asset acquisition or disposals with an individual value of more than \$300,000;
- (G) Approve all individual debt or other obligations greater than \$300,000;
- (H) Approve all individual contracts for goods and services over \$300,000;
- (I) Approve any transaction that requires a waiver of the Tribe's sovereign immunity.

**SUBCHAPTER C FINANCIAL DUTIES AND RESPONSIBILITIES**

**Section 70 Standards of Conduct; Conflicts of Interest (2 PYTC § 3-1-70)**

(A) Definitions

- (1) "Required Disclosure" means disclosure by the CEO or Council Member who has conflicting Interest of both:
  - (a) The existence and nature of the Conflicting Interest, and
  - (b) All facts known to the CEO or Council Member respecting the subject matter of the transaction that an ordinary person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.
- (2) "Family Member" of the CEO or a Tribal Council member means the person's spouse, parents, children or grandchildren provided such persons are residing in the same home, and shall include any other individual residing in the home not otherwise described herein. Family Members shall also include the persons described herein (other than an unrelated individual) living outside the home only if the CEO or Tribal Council member has actual knowledge of the interest of such Family Member in the transaction
- (3) "Conflicting Interest: means each of the following:
  - (a) The financial interest the CEO or Council Member or Family Member has in a potential transaction, regardless of whether that transaction must be approved by the Tribal Council, if the transaction must be approved by the Tribal Council, if the transaction is of such significance to the CEO or Council Member or Family Member that the interest would reasonably be expected to exert an influence on the CEO's or Council Member's judgment of he or she were called upon to vote on the transaction;
  - (b) The transaction at issue is of such character and significance to the Division and the Tribe that it would in the normal course be brought before the Council to approve the action, and
    - (i) The CEO, the Tribal Council Member, or the Family Member, is a director, general partner, agent, or employee of the entity that the Division is considering conducting the transaction with;

- (ii) The CEO, the Tribal Council Member, or the Family Member will receive remuneration, monetary or otherwise, from the entity the Division is considering transacting with, because of the transaction or in exchange for the transaction (other than whatever remuneration that the CEO, the Tribal Council Member or Family Member would ordinarily receive from the Tribe or the Division in exchange for their services).
  - (4) “Interest” means and financial or beneficial interest the CEO or Council Member has in a potential transaction, regardless of whether that transactions must be approved by the Tribal Council and regardless of the materiality of the interest.
- (B) The CEO, and his or her direct reports, when discharging their duties, shall act:
  - (1) In good faith;
  - (2) In a manner he or she reasonably believed to be in the best interest of the Division and Tribe; and
  - (3) To discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.
- (C) The CEO and each Council Member are expected to observe an obligation of undivided loyalty to the Division and the Tribe and to avoid actual or apparent conflicts of interest.
  - (1) The CEO may not take any action, without approval of Tribal Council, if such a decision involves a Conflicting Interest of the CEO or the CEO’s Family Member.
  - (2) No Council Member shall vote upon, or otherwise participate in , decisions involving a Conflicting Interest of the Council Member or his or her Family Member.
  - (3) The CEO or any Council Member shall not:
    - (a) Accept anything of personal value to influence the CEO or Council Member’s decision with respect to a transaction; or
    - (b) Accept any compensation (other than whatever remuneration that the CEO or the Tribal Council Member would ordinarily receive from the Tribe or the Division in exchange for their services), loan, gift, or anything of value from the Division, the Tribe, or from the employees, agents representatives or any person doing business with, or attempting to do business with, the Division or Tribe that could reasonably be expected to influence the CEO’s or the Tribal Council Member’s decision with respect to a transaction or business decision of the Tribe or the Division that would benefit the party providing the compensation, loan, gift, or item of value.
- (D) No Conflicting Interest transaction shall be entered into unless, after the Required Disclosure is made to the Council, the transaction received the affirmative vote of a majority of the Tribal Council members present at the regular meeting at which the vote takes place.
- (E) Any Conflicting Interest transaction as to which the Required Disclosure is not made, or as to which the transaction does not receive the affirmative vote of a majority of the Council members present at the meeting at which the vote takes place, is voidable by the Tribal Council.
- (F) The CEO or Council Member must promptly disclose to the Tribal Council the existence of any Interest the CEO or Council Member has in a potential transaction or in an entity that has an ongoing business relationship with the Tribe or Division.

**Section 80       Accounts; Reports; Audits (2 PYTC § 3-1-80)**

- (A)     The Division shall maintain financial books of account following the Tribe's fiscal year and shall generate financial reports accurately reflecting the financial position, revenues and disbursements of the Division in accordance with all applicable laws, including but not limited to the Pascua Yaqui Tribe-State of Arizona Gaming Compact ("Compact").
- (B)     An independent and reputable firm of certified public accountants shall audit the books of account and financial reports and its audit reports shall be presented to the Council, the Tribal Gaming Office Executive Director, and the Tribe's Finance Director in such format as the Council may require. Such an independent audit firm shall be (1) recommended by the Tribe's Treasurer, Finance Director, and Chairman, and (2) selected and approved by Tribal Council resolution in accordance with Chapter 2-1 of Title 2 Government Administration of the Pascua Yaqui Code.

**Section 90       Taxation (2 PYTC § 3-1-90)**

The Division shall comply with all applicable federal and state laws regarding employee withholding and social security taxes, and related obligations imposed by law upon employers with respect to their employees.

**Section 100      Budgets (2 PYTC § 3-1-100)**

The Division shall adopt an annual operating budget of revenues and expenditures and capital expenditures budget based upon the Tribe's fiscal year which shall be in such form as may be prescribed by the Council and the Tribe's Finance Director. The capital expenditures budget shall define the Division's plans for capital investments, including material operating leases, and shall state whether the planned investments are intended to be financed from cash or from borrowing.

**Section 110      Donations; Revenue Sharing (2 PYTC § 3-1-110)**

Distributions of Class III net win to cities, towns or counties in accordance with the Pascua Yaqui Tribe-State of Arizona Gaming Compact shall be approved by Tribal Council resolution. The Division may make donations of cash or property in an amount or a value not to exceed \$25,000 to a given organization for a charitable purpose or purposes, provided that by making such a donation, the Division does not exceed its allocation in the Division budget for charitable donations for the fiscal year at issue. All other charitable donations will be approved by the Tribal Council on a monthly basis.

**Section 120      Distributions (2 PYTC § 3-1-120)**

The Division shall, on a monthly basis, transfer to the Tribe its cash flow accumulations to the extent that they exceed the Division's operational, capital investment, and debt servicing requirements.

**Section 130      Tribal Expenditures (2 PYTC § 3-1-130)**

- (A)     The Division will bill all expenses incurred at the Division by the Tribe, Tribal Council, Council members, or by tribal departments, programs or employees (collectively, the "Government") to the appropriate Government departments or programs in the Division's next regular billing cycle. Such expenses will be charged at the Division's cost or at an appropriate value assigned to that expense by Division financial personnel.
- (B)     Use of Division facilities by the Government will be encouraged when not in conflict with other revenue generating activity.
- (C)     Government officials and employees will not be provided with any complimentary (i.e., no-cost) tickets, passes, meals, other items or services by the Division while conducting Government business where such items are provided to influence that officials' or employees' decision with

respect to a transaction. In addition, Tribal Council Members shall be subject to Tribal Gaming Office complimentary regulations as well as Council-approved compensation and expense policies.

**Section 140 Records Access (2 PYTC § 3-1-140)**

- (A) The Tribal Council Treasurer, the Chair of the Tribal Council Finance Oversight Committee, the Director of the Tribe's Internal Audit Department, and the Tribe's Finance Director shall have wholly unrestricted access to all the Division's financial and related records and may (1) require any financial or financially-related reports or information and designate the format of such reports, and (2) recommend to Council any steps necessary to audit, review, protect, and expand the Division.
- (B) The Chair of the Human Resources Oversight Committee, the Tribal Council Executive Officers, and the Director of the Tribe's Internal Audit Department shall have wholly unrestricted access to the Division's training and other skills development related records.

**SUBCHAPTER D INDIAN PREFERENCE**

**Section 150 Preference; Minimum Qualifications (2 PYTC § 3-1-150)**

The Division shall give preference with respect to recruiting, hiring, training, development, transfers, promotions, reduction in force layoffs, and contracting first to enrolled members of the Pascua Yaqui Tribe meeting minimum qualifications and then to other persons who meet minimum qualifications based on the following criteria and in the following order:

- (A) enrolled members of the Pascua Yaqui Tribe meeting minimum qualifications;
- (B) spouses of enrolled members of the Pascua Yaqui Tribe meeting minimum qualifications;
- (C) enrolled members of other recognized Indian tribes meeting minimum qualifications; and
- (D) other persons meeting minimum qualifications.

**Section 160 Promotions; Internships (2 PYTC § 3-1-160)**

The departments within the Division shall establish programs to train and promote qualified, enrolled members of the Pascua Yaqui Tribe to supervisory and managerial positions. In addition, the Division shall coordinate with the Tribe's Education Division to educate and recruit enrolled members of the Pascua Yaqui Tribe for internships and permanent positions requiring a postsecondary education.

**Section 170 Indian Preference Employment Goals (2 PYTC § 3-1-170)**

The departments within the Division shall meet all Indian preference in hiring goals as established by T.E.R.O. These goals shall be created by position and level of management.

**SUBCHAPTER E REPORTS TO THE COUNCIL**

**Section 180 General and Financial Reporting Requirements (2 PYTC § 3-1-180)**

The Division shall render reports and meet with the Tribal Council on its operations and significant activities and events on a monthly, quarterly, and annual basis. The reports shall, at a minimum, include the following information:



- (A) Monthly, quarterly, and annual basis, report on monthly, quarterly, and year-to date financial for the Division and its departments.
- (B) On a monthly, quarterly, and annual basis, report comparisons of financial performance between the current fiscal year and the previous fiscal year.
- (C) On a monthly, quarterly, and annual basis, report comparison of financial performance between current fiscal year and the approved budget for the current fiscal year;
- (D) On a monthly basis, report the financial results of promotional and entertainment events (a detailed financial report of all concerts, sporting and other promotional events, including revenues, all complimentarys, promotional and production costs and expenses, and net income, as well as the event's impact on gross and net gaming revenues);
- (E) On a quarterly and annual basis, provide financial statements prepared in accordance with General Accepted Financial Principles;
- (F) On a quarterly basis, the Division shall present to the Tribal Council updated Division operating plans, investment plan, strategic and future business plans, and economic and market updates;
- (G) On a monthly basis, reports all charitable donations, identified by recipient and amount;
- (H) On a monthly basis, report the number and dollar amount of contracts entered into by the Division.

**Section 190 Employment and Personnel Reports (2 PYTC § 3-1-190)**

- (A) On a monthly basis, the Division shall present to the Tribal Council the following reports:
  - (1) Employed tribal members report (*the number of enrolled members of the Tribe, spouses of enrolled members of the Tribe, and enrolled members of other Indian Tribes who are employed full-time by the Division in non-supervisory, supervisory, and management positions*)
  - (2) Employment report (*the number of vacancies by level and department, persons employed, and termination by the Division, listed by department, for enrolled and non-enrolled members.*)
  - (3) Employee complaint and resolution report
  - (4) Training, promotion, and skills development report
- (B) On a quarterly basis, the CEO shall present to the Tribal Council an updated report on human resources development policies and plans for recruiting, hiring, training, promoting, and mentoring enrolled members of the Tribe

**Section 200 Regulatory Reports (2 PYTC § 3-1-200)**

- (A) On a monthly basis, the CEO shall present to the Tribal Council the following reports:
  - (1) a brief summary of any pending or unasserted claims against the Division;
  - (2) the number and results of any regulatory or internal audit investigations and all corrective action plans

- (B) On a quarterly basis, the CEO shall present to Tribal Council any regulatory environment changes, including increased or decreased risks.

**Section 210 Proposed Fiscal Year Budget (2 PYTC § 3-1-210)**

- (A) The Division shall provide a proposed fiscal year budget at least 60 days before the end of the fiscal year. Such proposed budget shall include the operating and capital expenditures budget.
- (B) The Division’s report for the fourth quarter shall include, in addition to financial statements for the concluded fiscal year, the final operating and capital expenditures for that fiscal year.

**SUBCHAPTER F REGULATORY COMPLIANCE**

**Section 220 Regulatory Compliance (2 PYTC § 3-1-220)**

- (A) The Division shall comply with all applicable tribal law, including, but not limited to all employment laws, criminal laws, and gaming laws, and applicable federal laws.
- (B) The gaming activities of the Division shall comply with all provisions of the Tribe’s Gaming Ordinance and its amendments, the Tribe-Arizona Compact and its Appendices, and applicable federal law, including, but not limited to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et. seq., and the Johnson Act, 15 U.S.C. § 1175. The gaming activities of the Division shall be subject to the paramount regulatory authority of the Tribal Gaming Office.
  - (1) Regulatory compliance issues should be informally resolved at the lowest level possible. The Division shall regularly meet and confer with the Tribal Gaming Office and otherwise make every effort to informally resolve gaming regulatory issues. To the maximum extent permissible under applicable tribal, federal, and state law, gaming regulatory issues shall be resolved without the involvement of the State Gaming Agency or the National Indian Gaming Commission.
  - (2) If the Division and TGO fail to resolve a regulatory compliance issue, the issue shall be referred to the Office of the Attorney General (“OAG”) for an official legal opinion. The OAG official legal opinion shall be binding, unless otherwise amended by Tribal Council.

**Section 230 Division Policies and Procedures (2 PYTC § 3-1-230)**

- (A) Within 189 days of the effective date of this provision, the Division shall submit internal policies and procedures for the operational and regulatory compliance requirements of the Division to TGO for final review and approval. Upon final review and approval, the CEO shall transmit the internal policies and procedures to the Tribal Council and Tribal Internal Audit.
- (B) TGO shall notify the Tribal Council if the Division fails to provide internal policies and procedures to TGO within 180 days of notification that policies and procedures are incomplete, inadequate, or require amendment.

**Section 240 Food Service Establishments (2 PYTC § 3-1-240)**

The Division shall comply with the public safety standards for food and beverage handling provided in the United States Public Health Service Food and Drug Administration’s 2001 Food Code.

## SUBCHAPTER G TORT REMEDIES

### Section 250 Tort Remedies for Tribe's Class III Gaming Facilities (2 PYTC § 3-1-250)

- (A) Purpose: The Tribe has enacted this Code Section for the sole purpose of complying with the applicable provisions of its Tribal-State Gaming Compact requiring it to establish written procedures for the disposition of civil tort lawsuits arising from personal injury or property damage alleged to have been suffered by a patron or invitee in its Class III Gaming Facilities. It is not the Tribe's intent to, nor shall these procedures be interpreted to, grant any authority for a civil tort lawsuit that is not required by the Tribal-State Gaming Compact. Notwithstanding any change in the Tribal-State Gaming Compact, this Code Section shall remain in effect until changed by Tribal Council Resolution or Ordinance.
- (B) No Waiver of Sovereign Immunity: This Section is not a waiver of the Tribe's sovereign immunity. It is an authorization agreeing not to assert the defense of sovereign immunity in claims otherwise authorized under this section. It implements the Tribe's agreement in its Tribal-State Gaming Compact to forgo, on a limited basis, from asserting the subject matter defense of sovereign immunity from suit against a civil tort lawsuit that complies strictly with the claims procedures stated in this Code Section, and only to the extent that the insurance coverage stated in subparagraph (C) of this Code Section exists to pay the claim in whole. In its Tribal-State Gaming Compact, the Tribe expressly retained, and did not waive, the defense of sovereign immunity. Nothing in this Code Section shall be deemed to constitute a waiver of the Tribe's sovereign immunity from a particular lawsuit or from any lawsuit.
- (C) Policy of Insurance as Sole Source for Payment of Damages: Solely for the purpose of complying with its Tribal-State Gaming Compact, the Tribe will maintain a policy of commercial general liability insurance with a coverage limit of combined single limit for personal injury and property damage of not less than two million dollars (\$2,000,000) per occurrence and in the aggregate. The insurance policy shall include all claims made by a Patron or Invitee of the Gaming Facility for personal injury or property damage and shall include an endorsement providing that neither the insurer nor the Gaming Facility Operator will assert the subject matter defense of sovereign immunity from suit against a civil tort lawsuit that claims damages of less than the coverage limits of the commercial general liability insurance policy, is covered under the insurance policy, and complies strictly with the tort claims procedures stated in this Code Section.
- (D) Definitions of Terms in this Code Section:
- (1) Gaming Facility Operator shall be defined as it is defined in the Tribal-State Compact.
  - (2) Class III Gaming Facility shall be defined as the Casino of the Sun and the Casino del Sol and shall include the designated and marked parking areas that are west of the Casino del Sol main entrance road and contiguous to the Casino del Sol but shall exclude the AVA entertainment facility and all parking areas that are east of Casino del Sol main entrance road and contiguous to the AVA entertainment facility, and it shall include all designated and marked parking areas that are contiguous to the Casino of the Sun but not marked as restricted parking areas.
  - (3) Invitee shall be defined as a person who is in the Tribe's Class III Gaming Facility as a customer of one of the Tribe's Class III Gaming Facilities or their food or beverage facilities.
  - (4) Patron shall be defined as a person who is in the Tribe's Class III Gaming Facility as a customer of one of the Tribe's Class III Gaming Facilities or their food or beverage facilities.

- (5) A tort shall be defined as a negligent or intentional breach of the Tribe's duty to exercise reasonable care to protect a patron or invitee from a dangerous condition the Tribe knew or should have known existed in its Class III Gaming Facility and that proximately caused the patron to suffer personal injury or property damage.
- (E) Authority: Patrons or Invitees of the Pascua Yaqui Tribe's Class III Gaming Facilities who claim to have suffered personal injury or property damage while present at one of the Tribe's Class III Gaming Facilities are hereby authorized to file a claim, and if that claim is not paid in accordance with the Gaming Operator's Claims Policies established in accordance with the Tribal – State Gaming Compact, to file suit in a civil tort lawsuit in the Pascua Yaqui Tribal Court naming the Pascua Yaqui Tribe as defendant to recover money damages for their personal injury or property damage, but only provided that such Patron or Invitee complies strictly with the provisions of this Section.
- (1) The Gaming Facility Operator shall maintain a policy of commercial general liability insurance with a combined single limit for personal injury and property damage of not less than two million dollars (\$2,000,000) per occurrence and in the aggregate to cover Patron or Invitee claims under this section.
- (2) The insurance policy shall include an endorsement providing that neither the insurer nor the Gaming Facility Operator may invoke Tribal sovereign immunity up to the limits of the policy set forth in subsection (1) above with respect to any claim covered under the policy and disposed of in accordance with the Tribe's tort claim procedures and this section.
- (3) The insurance policy provided for in subsection (1) above shall not exclude all claims made by a patron or invitee for personal injury or property damage.
- (4) Neither the insurer nor the Gaming Facility Operator shall be precluded from asserting any other statutory or common law defense.
- (5) Any award or judgment rendered in favor of the patron or invitee shall be satisfied solely from insurance proceeds, and said judgment may not be enforced by levy, writ of attachment, judgment attachment or the like against property of the Gaming Facility Operator or the Pascua Yaqui Tribe.
- (F) Venue, Jurisdiction, Applicable Law and Limitations for Civil Tort Lawsuit:
- (1) Venue for any civil tort lawsuit filed under the authority of this Code Section shall be in the Pascua Yaqui Court exclusively.
- (2) The Pascua Yaqui Tribal Court shall have sole and exclusive jurisdiction for any civil tort lawsuit filed under the authority of this Code Section.
- (3) The governing law for determining all substantive and procedural issues arising in any civil tort lawsuit filed under the authority of this Code Section shall be the law of the Pascua Yaqui Tribe, including the Tribe's conflict of laws principles.
- (4) No civil tort lawsuit filed under the authority of this Code Section may be filed on a date that is more one year after the event that caused the alleged personal injury or property damage.
- (5) Notwithstanding the Tribe's agreement to forgo assertion of the subject matter defense of sovereign immunity from suit against a civil tort lawsuit that complies strictly with the claims procedures stated in this Code Section under the limited conditions set forth in this

section, neither the insurer nor the Gaming Facility Operator shall be precluded from asserting any other statutory or common law defense.

- (6) In determining the parties' degrees of fault and percentages of liability, the Pascua Yaqui Tribal Court shall apply strict comparative negligence principles and only award the Patron or Invitee the percentage of the total proven damages that represents the Tribe's percentage of fault.
  - (7) The Tribal Court shall award the patron compensatory damages only. Compensatory damages shall include specifically proven medical expenses that are not paid or payable by another payor.
  - (8) The Tribal Court may award the Patron or Invitee damages for the Patron's or Invitee's pain and suffering, but not more than an amount equal to the Patron's or Invitee's specifically proven medical expenses.
  - (9) The Tribal Court shall not have jurisdiction to award a Patron or Invitee punitive or exemplary damages of any kind.
  - (10) Any award or judgment rendered in favor of a Patron or Invitee shall be satisfied solely from the insurance proceeds from the policy of insurance described in subparagraph C of this Code Section.
  - (11) Upon request, the patron or the patron's designated representative shall be provided with a copy of this Code Section and any Class III Gaming Facility pertaining to tort claims procedures as well as the name, address and telephone number of the Gaming Facility Operator and the mailing address and telephone number of the clerk of the Tribal Court.
- (G) Prerequisites for an Actionable Civil Tort Lawsuit: The Tribe will forgo assertion of the subject matter defense of sovereign immunity in a civil tort lawsuit for personal injury to a Patron or Invitee or property damage to the property of a Patron or Invitee, but only if a claim for that injury or property loss is filed with the Chief Executive Officer of the Tribe's Gaming Enterprise Division that satisfies each and every one of the following prerequisites:
- (1) the claimant has first presented directly to the Chief Executive Officer of the Class III Gaming Facility by certified mail, proof of delivery requested, a written administrative claim not later than 180 calendar days after the date of the alleged personal injury or property loss, and
  - (2) the administrative claim contains the facts that support the claim, facts sufficient to reasonably describe the basis upon which liability is claimed, and a specific statement of the amount of the claim, and
  - (3) no less than 60 calendar days have passed since the date the administrative claim was presented directly to the Chief Executive Officer of the Class III Gaming Facility by certified mail, proof of delivery requested, and
  - (4) the civil tort lawsuit is filed in the Pascua Yaqui Tribal Court, which shall be the sole and exclusive venue for civil tort lawsuits filed by authority of this Code Section, and the Pascua Yaqui Tribal Court shall have sole and exclusive jurisdiction over the civil tort lawsuit filed by authority of this Code Section, and
  - (5) the civil tort lawsuit is filed in the Pascua Yaqui Tribal Court not later than one year after the event that caused the alleged personal injury or property damage, and

- (6) the policy of insurance described in Subsection (C) of this Code Section covers the personal injury or property damage alleged in the civil tort lawsuit, and
- (7) the plaintiff in the civil tort lawsuit shall be only a Patron or Invitee who allegedly suffered injury in the Class III Gaming Facility, and
- (8) the civil tort lawsuit does not claim damages for personal injury or property loss of any person other than the Patron or Invitee, and makes no claim of derivative liability by a spouse, other family member or other person or party claiming indirect injury, and
- (9) the civil tort lawsuit claims damages for an alleged personal injury sustained by, or loss to property owned by, a Patron or Invitee of the Tribe's Class III Gaming Facility during the Patron's or Invitee's use of the Tribe's Class III Gaming Facility, and
- (10) the civil tort lawsuit seeks relief only in the form of monetary damages, and
- (11) the civil tort lawsuit states a specific amount of damages claimed, and
- (12) the damages claimed in the civil tort lawsuit do not exceed the insurance coverage amount stated in Subsection (C) of this Code Section."

**DISPOSITION TABLE**

| <b>Former Section</b> | <b>New Section</b>  |
|-----------------------|---------------------|
| NEW                   | Section 1           |
| NEW                   | Section 2           |
| NEW                   | Section 3           |
| NEW                   | Section 4           |
| NEW                   | Section 5           |
|                       |                     |
| <b>Article One</b>    | <b>Subchapter A</b> |
| Section 2101          | Section 10          |
| Section 2102          | Section 20          |
| Section 2103          | Section 30          |
|                       |                     |
| <b>Article Two</b>    | <b>DELETED</b>      |
| Section 2202          | DELETED             |
| Section 2203          | DELETED             |
|                       |                     |
| NEW                   | <b>Subchapter B</b> |
| NEW                   | Section 40          |
| NEW                   | Section 50          |
| NEW                   | Section 60          |
|                       |                     |
| <b>Article Three</b>  | <b>Subchapter C</b> |
| NEW                   | Section 70          |
| Section 2301          | Section 80          |
| Section 2302          | Section 90          |
| Section 2303          | Section 100         |
| Section 2304          | Section 110         |
| Section 2305          | Section 120         |
| Section 2306          | Section 130         |
| Section 2307          | Section 140         |
|                       |                     |
| <b>Article Four</b>   | <b>DELETED</b>      |
| Section 2401          | DELETED             |
| Section 2402          | DELETED             |
| Section 2403          | DELETED             |
| Section 2404          | DELETED             |
| Section 2405          | DELETED             |
| Section 2406          | DELETED             |
| Section 2407          | DELETED             |
|                       |                     |
| <b>Article Five</b>   | <b>Subchapter D</b> |
| Section 2501          | Section 150         |
| Section 2502          | Section 160         |
| NEW                   | Section 170         |
|                       |                     |

| <b>Former Section</b> | <b>New Section</b>  |
|-----------------------|---------------------|
| <b>Article Six</b>    | <b>Subchapter E</b> |
| Section 2601          | Section 180         |
| Section 190           | DELETED             |
| Section 200           | Section 190         |
| Section 210           | DELETED             |
| Section 220           | Section 200         |
| Section 230           | Section 210         |
|                       |                     |
| <b>Article Seven</b>  | <b>Subchapter F</b> |
| Section 240           | Section 220         |
| Section 250           | Section 230         |
| Section 260           | Section 240         |
|                       |                     |
| NEW                   | <b>Subchapter G</b> |
| NEW                   | Section 250         |
|                       |                     |
|                       |                     |
|                       |                     |
|                       |                     |
|                       |                     |

