

# Rincon Band of Luiseño Indians

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## RESOLUTION NO. 2009-11

### RINCON BAND OF LUISEÑO MISSION INDIANS OF THE RINCON RESERVATION, CALIFORNIA

#### A RESOLUTION ADOPTING THE REVISED RINCON PATRON TORT CLAIMS ORDINANCE

WHEREAS, the Rincon Band of Luiseño Mission Indians of the Rincon Reservation, California ("Tribe") is organized pursuant to the Articles of Association passed and approved by the Commissioner of Indian Affairs on March 15, 1960; and

WHEREAS, the Rincon Business Committee is the duly elected governing body of the Tribe, empowered pursuant to the Articles of Association to represent the Tribe and act in all matters that concern the general welfare of the Tribe; and

WHEREAS, the Rincon Business Committee has the authority, right, and obligation to protect and promote the health, safety, and general welfare of the Rincon San Luiseno Band of Mission Indians and its tribal members; and

WHEREAS, the Harrah's Rincon Casino and Resort, a wholly owned enterprise of the Tribe ("Enterprise"), brings numerous visitors the Tribe's lands every day; and

WHEREAS, while the Enterprise strives to take all reasonable and necessary precautions to provide a safe and secure atmosphere to guests of the Enterprise, injuries to property and guests at the Gaming Facility can happen and accordingly, the Tribe has determined that it is appropriate to provide a process for redress of claims of injury to Enterprise guests and their property; and

WHEREAS, the Tribe has developed the Rincon Patron Tort Claims Ordinance which allows guests of the Enterprise who have suffered damage to their person or property to have their claims resolved through an insurance adjustment process, and bring an action in the Intertribal Court for resolution of their claim.

IT IS HEREBY RESOLVED, the Rincon Business Committee adopts and approves the Rincon Patron Tort Claims Ordinance as amended attached hereto as Exhibit A; and

BE IT FURTHER RESOLVED, that the attached Rincon Patron Tort Claims Ordinance shall supersede all previously adopted Patron Tort Claim Ordinances of the Tribe and tribal laws relating thereto; and

BE IT FURTHER RESOLVED, that the Rincon Business Committee determines that the attached Patron Tort Claims Ordinance is retroactive and applicable to all Claims; and

**Bo Mazzetti**  
Chairman

**Stephanie Spencer**  
Vice-Chairwoman

**Gilbert Parada**  
Council Member

**Charlie Kolb**  
Council Member

**Steve Stallings**  
Council Member

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BE IT FURTHER RESOLVED, that the Rincon Business Committee hereby directs the Intertribal Court to take such action as is necessary to apply the attached Rincon Patron Tort Claims Ordinance immediately; and

BE IT FURTHER RESOLVED, that this resolution shall be effective on March 19, 2009.

**CERTIFICATION**

We, the undersigned, as the governing body of the Rincon Band of Luiseño Mission Indians of the Rincon Reservation, California, do hereby certify that the Rincon Business Committee is composed of five (5) members of whom 5 constituting a quorum were present at a meeting duly held on March 19, 2009, by a vote of 5 in favor, 0 against, 0 absent, and 0 abstaining.

  
\_\_\_\_\_  
Bo Mazzetti, Chairman

  
\_\_\_\_\_  
Stephanie Spencer, Vice Chairwoman

  
\_\_\_\_\_  
Gilbert Parada, Council Member

  
\_\_\_\_\_  
Charles Kolb, Council Member

  
\_\_\_\_\_  
Steve Stallings, Council Member

**RINCON BAND OF LUISEÑO INDIANS**  
**PATRON TORT CLAIMS ORDINANCE**

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## I. TITLE

This Ordinance shall be referred to as the "Patron Tort Claims Ordinance."

## II. DEFINITIONS

As used in this Ordinance, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise.

**"Business Committee"** shall mean the governing body of the Tribe, as established by the Tribe's Articles of Association. Within the confines of this Ordinance, reference to the Business Committee requiring an action shall mean the Business Committee or its designee.

**"Claim"** means a request for compensation related to an injury submitted by a Patron.

**"Compact"** is the Tribal-State Class III gaming compact executed by the Governor of California and the Tribe, ratified by the California Legislature and approved by the Secretary of the Interior or an authorized representative thereof.

**"Comparative Negligence"** means negligence is measured in terms of percentage, and any damages allowed shall be diminished in proportion to the amount of negligence attributable to the Patron for whose injury, damage or death recovery is sought.

**"Contributory Negligence"** means the negligence of a Patron which is a contributing cause and which cooperates with the negligence of the defendant in causing the Patron's injury.

**"Dangerous Condition"** means a physical aspect of a Gaming Facility or the use thereof that constitutes an unreasonable risk to human health or safety, that is known to exist or that in the exercise of reasonable care should have been known to exist and that condition is proximately caused by the negligent acts or omissions of the Gaming Operation in constructing or maintaining such facility. 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 nor due to the mere existence of wind, ice or temperature by itself, or by the mere existence of a natural physical condition, or act of God or anything beyond the control of the Gaming Operation.

**"Duty"** exists when a person is legally required to conduct himself in a particular manner at the risk that if he does not do so he may be liable to another to whom the duty is owed for injury suffered by such other person.

**"Employee"** means a part or full time employee or an agent of the Gaming Operation, when acting during the course and within the scope of their employment whether with or without

compensation. 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 their duties to the Gaming Operation. Employee shall not include an officer, agent or employee of the Tribe that is not acting in a capacity as an officer, agent or employee of the Tribe's Gaming Operation.

**“Fault”** means the failure to fulfill a legal duty. It includes, but is not limited to, acts proximately causing or substantively contributing to injury or damages sustained by a person, and includes negligence and comparative negligence.

**“Gaming Facility”** means the buildings 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, building, and areas, including parking lots and walkways, a principal purpose of which is to serve the activities of the Class III gaming provisions of the Tribe's Gaming Operation.

**“Gaming Operation”** is the business enterprise owned by the Tribe that offers and operates Class III gaming activities on Indian lands over which the Tribe exercises jurisdiction. For the limited purposes of this Ordinance, Gaming Operation shall include the Management Contractor and its employees acting on behalf of the business enterprise owned by the Tribe that offers and operates Class III gaming activities on Indian lands over which the Tribe exercises jurisdiction, and shall be referenced as the “Harrah’s Rincon Casino and Resort”.

**“Gross Negligence”** is conduct which involves negligence plus knowledge of facts which would lead a reasonable person to realize: (1) that the conduct creates an unreasonable risk of physical harm to another or to the actor, and (2) that such risk of physical harm is substantially greater than that which is necessary to make the actor's conduct negligent. Gross negligence requires a reckless disregard for the safety of the actor or others.

**“Injury”** means injury to a Patron, death, damage to or loss of property of whatever kind, which, if caused by the negligent or wrongful act or omission of a private person would be a tort under Tribal law, applicable federal law, and, to the extent consistent with Tribal law, laws of the State of California in effect as of the date of this Ordinance, regardless of the type or form of action or form of relief sought by the Patron.

**“Insurance” or “Insurance Policy”** means that public liability insurance for patron claims in amounts required pursuant to the terms of the Compact.

**“Insurance Carrier”** shall mean that entity providing Insurance to the Gaming Operation.

**“Management Contractor”** means any Person who has entered into a valid and effective management contract with the Tribe, provided that the management contract has been approved by the National Indian Gaming Commission pursuant to the Indian Gaming Regulatory Act and its accompanying regulations.

**“Negligence”** means conduct which falls below the standard established by law or custom for the protection of others against unreasonable risk of injury or harm. The standard of conduct to which a person must conform to avoid being negligent is that of a reasonable person under similar circumstances. Negligence includes both acts and omissions.

**“Negligence Per Se”** is an act or omission resulting in damage to another which is strictly declared and treated as negligence, because the act or omission is a violation of a particular statute or ordinance designed to prevent or protect against the type of injury suffered.

**“Patron”** shall mean a person present at and who can demonstrate that they are or intend to be a customer of the Tribe’s Gaming Facility, but shall not include a Trespasser or Employee while on duty.

**“Person”** means any individual, partnership, corporation, association, government or private organization of any kind other than the Tribe.

**“Products Liability”** means the liability of a manufacturer, distributor or seller of a product for damages for bodily injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, installation, preparation, assembly, testing, packaging, labeling, sale, use or consumption of any product; the failure to warn or protect against a danger or hazard in the use or misuse of the product; or failure to provide proper instructions for the use or consumption of any product.

**“Property”** shall mean personal property.

**“Punitive Damages”** are damages designed to punish for intentional, reckless, or grossly negligent acts of malice, oppression, or fraud; damages inflicting a punishment or penalty.

**“Trespasser”** means a person who enters or remains upon the land of another without permission or the right to do so.

**“Tribal Court”** shall mean the Intertribal Court of Southern California at 49002 Golsh Road, Rincon Indian Reservation, Valley Center, CA 92082, or such other tribunal as may be designated by the Business Committee.

**“Tribal law”** means the Articles of Association, laws, rules, regulations, ordinances and other legislative enactments adopted by the Tribe, tribal custom and tradition, and common law of the Tribe.

**“Tribe”** means the Rincon Band Of Luiseño Indians, including but not limited to any branch, office, department, agency, commission, utility, authority, instrumentality, enterprise, corporation (whether chartered under Tribal or federal law, but excluding for purposes of this Ordinance corporations chartered under the law of any State), or other entity of the Tribe. Within the confines of this Ordinance, reference to the Tribe requiring an action shall mean the Business Committee or its designee.

### **III. PURPOSE**

The purpose of this Ordinance is to establish a timely and effective administrative procedure for resolving Claims submitted by a Patron who has suffered injury resulting from intentional or negligent injuries to person or property at the Gaming Facility or in connection with the Tribe's Gaming Operation, for which the Gaming Operation is legally responsible.

### **IV. CAUSES OF ACTION**

Subject to the limitations of this Ordinance, the following causes of action may be filed against the Gaming Operation:

- (1) Injuries proximately caused by a Dangerous Condition of the Gaming Facility; or
- (2) Injuries caused by the negligent or intentional acts or omissions of an Employee acting within the scope of his or her office, employment, or agency, for which the Gaming Operation is legally responsible.

### **V. LIMITED WAIVER OF SOVEREIGN IMMUNITY**

Limited Waiver of Sovereign Immunity of the Gaming Operation. The Tribe hereby provides a limited waiver of sovereign immunity of the Gaming Operation for purposes of application and enforcement of this Ordinance, provided that a Claim is covered under the Insurance Policy and disposed of in accordance with this Ordinance and further provided that any award or judgment rendered in favor of the Patron shall only be for compensatory monetary damages and satisfied solely from proceeds of the Insurance Policy. This limited waiver of sovereign immunity of the Gaming Operation shall be read narrowly. The Tribe has not waived the sovereign immunity of the Tribe or Gaming Operation from suit in state or federal court, or for any claims not specifically described herein.

## VI. NOTICE OF INJURY AND CLAIMS PROCESS

If a Patron has been injured or suffered damage to personal property at the Tribe's Gaming Facility or in connection with the Gaming Operation, the Patron has the right to make a Claim pursuant to the terms of this Ordinance. A Patron must follow the procedures set forth below. Failure to follow the procedure below may result in the Patron being barred from recovery.

- A. Notice Of Injury. If a Patron suffers intentional or negligent injuries to their person or property at the Gaming Facility or in connection with the Tribe's Gaming Operation, then such Patron shall submit a notice of such injury ("Notice of Injury"). It is the responsibility of the Patron to submit a Notice of Injury.
- B. Form of Notice. The Notice of Injury shall include the name of the Patron claiming injury, contact information for the Patron, a description of the incident from which the injury arose, and a description of the injury. A sample form of Notice of Injury is attached as Exhibit A to this Ordinance. Notice of Injury forms shall be available at the Security podium upon request.
- C. Time for Submission of Notice of Injury. A Patron or their representative shall submit a Notice of Injury within one hundred eighty (180) days of the incident giving rise to the Claim. Failure to submit a Notice of Injury within one hundred eighty (180) days may result in a Patron's Claim being denied. If the last day of the Notice of Injury submission period falls on a Saturday, Sunday, or officially-recognized federal, or Tribal holiday, the last day to file a Notice of Injury shall be deemed to be the next business day.
- (1) If a Notice of Injury is not timely filed due to the severe physical or mental incapacity of the Patron, the Notice of Injury must be accompanied by a declaration under penalty of perjury by the Patron's treating physician attesting to the date upon which Patron became incapacitated and the date upon which Patron regained capacity, or an order of a court of competent jurisdiction to the same effect. The time for filing a Notice of Injury will be tolled during the period of incapacity so established.
- D. Place and Person for Submission of Notice of Injury. If a Patron desires to make a Claim, the Patron must complete a Notice of Injury form and submit as directed in paragraph D(1).
- (1) The Notice of Injury form must be mailed to the following address by certified mail, return receipt requested, or by overnight courier with proof of delivery requested:

Risk Manager – Administrative Officer  
Harrah's Rincon Casino and Resort  
777 Harrah's Rincon Way  
Valley Center, California 92082

- E. Action on Notice of Injury. Upon the Patron's submission of a Notice of Injury, the Patron is requested to, but not required to, wait to file suit (as set forth in VI. (F) below), to see if a pre-filing resolution can be accomplished. However, in no event should the Patron wait until after deadline set forth in VI (F) to file suit. Such pre-filing attempts to resolve a Claim shall not be a defense to the filing deadlines set forth in VI(F) below.
- F. Commencement of Suit in Tribal Court. The Tribal Court shall have exclusive jurisdiction to adjudicate actions commenced pursuant to this Ordinance. At any time after the delivery of a Notice of Claim the Patron may commence suit against the Gaming Operation in Tribal Court. No action shall be brought under this Ordinance more than two (2) years after the date of the incident giving rise to the Claim. Service of process shall be the same as set forth in paragraph VI(D)(1).
- G. Court Rules. The Parties and a Claim shall proceed pursuant to the Code of Civil Procedure and Rules of Court of the Intertribal Court of Southern California, to the extent that such Code and Rules do not conflict with this Ordinance and the laws of the Tribe. Notwithstanding any language in the Code of Civil Procedure and Rules of Court of the Intertribal Court of Southern California to the contrary, the Gaming Operation shall have not less than sixty (60) days to file a response.
- H. Finality. Decisions of the Tribal Court shall be final and conclusive on the Patron.
- I. Acceptance of Settlement. The acceptance of any award, compromise or settlement of a Claim shall be final and conclusive on the Patron. Said acceptance shall constitute a complete release of any present or future claim arising from the same or connected circumstances by the Patron against the Gaming Operation and their employees and agents whose act or omission gave rise to the Claim, whether or not such future claims or the circumstances warranting such future claim are known or unknown to the Patron at the time the Patron accepts the settlement.

## **VII. CLAIMS EXCLUDED**

The following is a list of Claims that may not be brought pursuant to this Ordinance. Notwithstanding any other provision of this Ordinance, there shall be no exception to or waiver of sovereign immunity for any claim resulting from or related to the following:

- (1) 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 an official, employee or agent of the Tribe or Gaming Operation whose negligence or intentional misconduct are alleged to have caused the injury;
- (2) Any injury proximately caused by the act or omission of any person who is not an officer, employee or agent of the Tribe or Gaming Operation;
- (3) Any injury proximately caused by an independent contractor of the Tribe or Gaming Operation;
- (4) An injury proximately caused by the acts or omissions committed by any patron of the Tribal Gaming Facility;
- (5) Tribal legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature, such as, but not limited to, adopting or failing to adopt a law;
- (6) Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval or other authorization provided for under Tribal law;
- (7) Alleged damages or injuries arising from actual or prospective contractual relationships between the Tribe or Gaming Operation and other parties;
- (8) Claims against the Tribe or Gaming Operation for equitable indemnity or contribution arising from third party litigation;
- (9) Claims against the Tribe or Gaming Operation for punitive or exemplary damages, attorneys' fees or injunctive relief;
- (10) Claims against the Tribe or Gaming Operation based on any theory of Products Liability;
- (11) Claims against the Tribe or Gaming Operation for an injury to the driver of a motor vehicle who is found by a court of competent jurisdiction to be driving while intoxicated or was driving recklessly;
- (12) Claims against the Tribe or Gaming Operation for the criminal acts of Employees acting beyond the course and scope of the Employee's authority or employment;

(13) Claims against the Tribe or Gaming Operation for vicarious liability for injuries or damages resulting from any act of an Employee whose acts are outside or beyond the course and scope of the Employee's authority or employment.

(14) Claims against members of the Business Committee for actions taken during the course and within the scope of their duties as members of the Business Committee.

## **VIII. RECOGNIZED TRIBAL DEFENSES**

A. With respect to any Claim to which this Ordinance applies, the Tribe and Gaming Operation shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the Employee or agent of the Tribe and Gaming Operation whose act or omission gave rise to the Claim, as well as any other defenses to which the Tribe is entitled.

B. This Ordinance does not provide any remedy for alleged injuries resulting from policy decisions or the exercise of discretion vested in the Tribe and Gaming Operation or an Employee, or any act or omission of an officer, employee, or agent that was the result of the good faith execution or enforcement of any Tribal, federal, or state ordinance, resolution, law, or rule.

C. This Ordinance does not provide any remedy for alleged damages or injuries arising from a misrepresentation, or good faith mistake or error, by an officer, employee, or agent of the Gaming Operation unless such misrepresentation was a result of actual fraud, corruption, or malice, and the Patron reasonably relied upon such misrepresentation to his/her detriment.

D. Any Claim for monetary damages assumed by the Tribe and Gaming Operation which otherwise would lie against an Employee or the Tribe and Gaming Operation except for this Ordinance is forever extinguished in favor of the remedy established and limited by this Ordinance, whether or not the person in whose favor such remedy is created exercises the right to timely present written notice of any Claim and commence an action for an injury in Tribal Court under this Ordinance.

E. The Gaming Operation shall not be liable for injury or damage caused by a condition of its property if it is established that the act or omission that created the condition was reasonable, based on weighing the probability and gravity of the potential injury against the practicability and cost of taking alternative action to prevent or protect against the risk of injury, or if the Patron knew or reasonably should have been aware of the condition prior to sustaining the injury upon which the Claim is based.

F. This Ordinance does not provide any remedy for any person who is not a Patron of the Gaming Facility.

G. Tribal defenses to a Claim shall include failure of a Patron to submit a completed Notice of Injury form within one hundred eighty (180) days of an incident giving rise to a Claim, and shall include failure of a Patron to commence suit in Tribal Court within two (2) years after the date of incident giving rise to a Claim.

## **IX. REMEDY LIMITATIONS**

A. **Negligence Per Se; Violation Of Law.** A Patron who violates any Tribal ordinance, regulation or other federal or state law governing the conduct of a person is negligent per se whether or not such person has actual knowledge of such ordinance or law. A Patron's ignorance of such law shall not be a defense.

B. **Comparative Negligence**

(1) Contributory negligence shall not bar a recovery in any tort action by any Patron or his legal representative to recover damages for negligence resulting in injury or harm to a Patron or property. Any damages allowed shall be diminished in proportion to the amount of negligence attributed to the Patron.

(2) In the event that a Patron acts intentionally or is grossly negligent, that Patron shall be presumed to be one hundred percent (100%) at fault for the injury or harm and shall be eligible for recovery.

(3) The Tribal Court shall make special findings of fact, determining the total amount of damages and the percentages of fault attributable to each actor whether or not a party to the litigation.

(4) **Pro Rata Shares.** In determining the pro rata share of each party in the entire liability, the relative degrees of fault of each party shall be the basis for allocations, and, if equity requires, the collective liability of some as a group may constitute a single share.

C. **Joint And Several Liability Abolished.** In any action for personal injury, property damage or wrongful death, the liability of each defendant for damages is several only and is not joint, except as provided herein. Each defendant is liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault. Separate judgment shall be entered in a judgment against the defendant for that amount.

D. In Claims for wrongful death of a Patron, the Gaming Operation may be found liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons for whose benefit the Claim is brought. Claims for non-pecuniary personal injury not involving death must be personal to the Claimant. Claims for injury to or loss of property shall be limited to the fair market value of the property immediately preceding the moment of loss or injury.

**X. BURDEN OF PROOF**

The burden of proof shall be on a Patron to prove every element of their Claim by clear and convincing evidence.

**XI. APPLICABLE LAW**

Tribal law and applicable federal law shall apply and shall govern all Claims and actions brought under this Ordinance.

**XII. INCONSISTENT LAWS REPEALED**

All Tribal law inconsistent with this Ordinance is hereby repealed and superseded by this Ordinance. Upon written permission of the Business Committee or its designated representative, Claims arising prior to the effective date of this Ordinance may be adjudicated and resolved pursuant to this Ordinance.

**XIV. EFFECTIVE DATE**

This Ordinance shall be effective upon approval of the Rincon Business Committee.

**EXHIBIT A**

**NOTICE OF INJURY FORM**

Please provide the following information if you believe that you have suffered an injury to yourself or your property while at Harrah's Rincon Resort and Casino and it is responsible for such injury. We encourage you to provide as much information as possible. If necessary, this document may be photocopied and additional sheets of paper may be attached.

Upon completion of this form, please mail by certified mail, return receipt requested, or by overnight courier with proof of delivery requested to:

Risk Manager – Administrative Officer  
Harrah's Rincon Casino and Resort  
777 Harrah's Rincon Way  
Valley Center, California 92082

**1. Contact Information:**

Name : \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address, if any: \_\_\_\_\_

**2. Description of the incident which brought about the injury.**

Please include detailed information about the circumstances from which the claimed injury arose, including the date, time and place of incident, as well as the identity and contact information of any witnesses to the incident.

**3. Description of the injury.** Please describe the nature and extent of the injury. You may, but are not required to, attach medical records.

**Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_