

TITLE 80
TORT ORDINANCE
OF
THE HOOPA VALLEY TRIBE

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SECTION I: GENERAL PROVISIONS

Section 1.01 Introduction

The policy and procedures set forth in this Ordinance shall constitute the rules and requirements regarding filing a Claim against the Hoopa Valley Tribe ("Tribe"), its employees, officers, departments, programs, enterprises, entities, or agents, etc. The Tribe reserve the right to modify or change this Ordinance at any time, provided that modifications and changes are made in accordance with Title 6: Legislative Procedures Act ("LPA") of the Hoopa Valley Tribal Code.

Section 1.02 Authority

Pursuant to the Tribe's inherent sovereignty and Article IX of the Constitution and Bylaws of the Hoopa Valley Tribe ("Tribe"), the Hoopa Valley Tribal Council ("Council") has the power to enact and enforce laws governing the conduct of member and nonmembers of the Hoopa Valley Tribe, and to safeguard and promote the peace, safety, and general welfare of the Tribe and those that enter onto its Hoopa Reservation.

Section 1.03 Title

This Ordinance may be referred to, or cited as, "Title 80," "80 HVTC," or the "Tort Ordinance."

Section 1.04 Purpose and Objective

(1) It is the desire of the Council to establish a fair process whereby Claimants may resolve Claims alleged to arise out of, connected with, or relating to the operation of the Tribe, its departments, programs, entities, or enterprises.

(2) This Title is to provide a uniform and consistent method that the Hoopa Valley Tribal Council's self-funded Tort Liability Program, under the direction of the Tribal Risk Management Office, may meet and resolve its liabilities in general conformity with accepted common law practice within the community, unless otherwise amended by Tribal resolution or this Ordinance. This Ordinance sets forth the exclusive remedy for a tort action against the Tribe.

Section 1.05 Application

This Ordinance applies to the Tribe and any of its departments, programs, entities, enterprises, activities, or anyone who does business or interacts with the Tribe, its departments, programs, entities, entities or activities, except as outlined in Section 3.03 below.

Section 1.06 Definitions

Wherever used in this Ordinance, the terms defined in this section shall have the following meaning.

- (1) "Administrative Claim Form" shall mean a document prepared by the Tribe for the Claimant's use, that requests specific information from the Claimant in order for the Claim to be investigated.
- (2) "Claim" shall mean a written document alleging an injury to person or property arising out of, connected with, or relating to the operation of the Tribe, its departments, programs, entities, enterprises, officers, or employees.
- (3) "Claimants" shall mean a person by or on whose behalf a Claim for recompense for bodily injury, property damage, or personal injury is made pursuant to this Ordinance.
- (4) "Course and Scope of Employment" shall mean the range of conduct and activity within which an employee can reasonably be considered to be carrying out the business of his or her employer.
- (5) "Days" shall mean calendar days, unless specified otherwise.
- (6) "Exemplary Damages" shall mean damages requested and/or awarded when the willful acts of the Tribe, its employee(s), officer(s), or agent(s) were malicious, violent, oppressive, fraudulent, wanton or grossly reckless.
- (7) "Ordinance" shall mean this Tort Ordinance.
- (8) "Proximately Caused" shall mean the primary cause of the injury. It is an action that produced foreseeable consequences without which the injuries would not have occurred.
- (9) "Punitive Damages" shall mean damages exceeding simple compensation and awarded to punish the defendant.

- (10) "Risk Manager" shall mean the employee of the Tribe responsible for the administration of the Hoopa Valley Tribal Council's self-funded Tort Liability Program and responsible for resolving its liabilities, including investigation and management of Tort Claims, in accordance with this Ordinance.
- (11) "Self-Governance Activities" shall mean programs, services, functions, and activities of the Tribe performed pursuant to the Indian Self-Determination and Education Assistance Act, as amended.
- (12) "Tribal Administrative Claim Process" shall mean the Tribe's administrative process to resolve Tort Claims.
- (13) "Tribal Council" shall mean the Hoopa Valley Tribal Council, the Tribe's governing body as established by the Hoopa Valley Tribal Constitution and Bylaws.
- (14) "Tribal Court" shall mean the Hoopa Valley Tribal Court, established pursuant to Tribal ordinance.
- (15) "Tribal Risk Management Office" shall mean the Tribal department responsible for the administration of the Hoopa Valley Tribal Council's self-funded Tort Liability Program and responsible for resolving its liabilities in accordance with this Ordinance.
- (16) "Tribe" shall mean the Hoopa Valley Tribe, a federally recognized Indian tribe.
- (17) "Tort Claim" shall mean a written document alleging an injury to person or property arising out of, connected with, or relating to the operation of the Tribe, its departments, programs, entities, enterprises, officers, or employees.
- (18) Compensable Injury shall mean an injury to person or property that occurs on the premises of the Hoopa Valley Tribe (except as otherwise excluded), which results in monetary damages, and was actually and proximately caused by the negligent act or omission of an official, agent or employee of the Hoopa Valley Tribe. "Compensable Injury" does not include any injury allegedly sustained by an official, agent or employee of the Hoopa Valley Tribe in connection with his/her employment or performance of official duties, any claim for punitive or exemplary 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 an official, employee, or agent of the Hoopa Valley Tribe whose act or omission proximately caused or contributed to the cause of the injury, or any injury proximately caused by the act or omission of a person who is not an officer, employee or agent of the Hoopa Valley Tribe or who is not otherwise directly subject to the direction, supervision or control of the Hoopa Valley Tribe."

SECTION II: TORT PROCEDURE

Section 2.01 Tribal Administrative Claim Process

If a Claimant believes that he/she may have a Tort Claim against the Tribe, he/she must first exhaust the Tribal Administrative Claim Process before he/she may bring a Claim under this Ordinance in Tribal Court. The Tribal Administrative Claim Process is as follows:

(1) Step 1. When a Claimant believes they have suffered an injury or damage covered by this Ordinance, they must inform the Tribe's Risk Manager in writing or by telephone to request the Administrative Claim Form.

(2) Step 2. The Tribe's Risk Manager, or his/her staff, shall provide a copy, either in paper or electronic form, of the Administrative Claim Form to the Claimant.

(3) Step 3. The Claimant must file the Administrative Claim Form within one hundred (100) days of the alleged occurrence either in-person or via mail. The Administrative Claim Form must be filed with the Tribal Risk Management Office. Claims filed with any other department, program, enterprise, or entity of the Tribe shall not be accepted. The deadline to file the Administrative Claim Form shall not be extended under any circumstance.

(4) Step 4. The Risk Manager shall investigate the Claim and inform the Claimant in writing, within 90 days of receipt of request, whether the Claim has been accepted, rejected or denied. If no response is sent to the Claimant within 90 days, the Claim is deemed denied. Any written responses of rejection or denial shall include notice of Claimants' next available steps under this Ordinance.

All responses shall be deemed given when deposited in the United States mail, addressed to the Claimant or the Claimant's representative as specified in the Claim, first class certified mail, postage prepaid.

(5) Step 5.

(a) If the Claim has been accepted, the Risk Manager shall work with the Claimant to resolve the Claim in accordance with Section III below.

(b) If the Claim has been rejected because it does not meet the criteria outlined in this ordinance, the Claimant may, if possible, amend his/her Administrative Claim Form to be in compliance with Section III below and resubmit such Claim to the Risk Manager within one-hundred (100) days of the alleged occurrence.

(c) If the Claim was denied or rejected, Claimant shall have, without exception, six (6) months from the date of denial or deemed denial, to file an appeal with the Hoopa Valley Tribal Court in accordance with Section 2.02 of this Ordinance.

Section 2.02 Tribal Court Hearing

- (1) The Tribal Court shall have exclusive authority and jurisdiction to hear and adjudicate the Tort Claim if the Tort Claim was first denied or deemed denied by the Tribe in accordance with Section 2.01 above.
- (2) The Tort Claim must be filed with the Hoopa Valley Tribal Court, without exception, within six months from the date of denial or deemed denial of the Tort Claim in the Tribal Administrative Claim Process.
- (3) Any action commenced pursuant to this Ordinance shall be initiated in accordance with the applicable rules of the Hoopa Valley Tribal Court, including payment of appropriate filing fees.
- (4) Each party shall bear its own costs, including without limitation, attorney's fees, expert fees, witness fees, discovery related fees, interpreter fees, and court reporter fees.
- (5) Failure of Claimant to comply with the Tribal Administrative Claim Process requirements of this Ordinance is a jurisdictional defect and the Hoopa Valley Tribal Court shall deny any relief requested for lack of jurisdiction.
- (6) Each attorney who appears on behalf of a Claimant must be admitted to the Hoopa Valley Tribal Bar.
- (7) The Claimant may appeal an order of the Tribal Court, in accordance with its rules regarding filing of appeals.
- (8) The decision of the Tribal Court shall be final and binding on both parties.

SECTION III: CLAIMS GENERALLY

Section 3.01 Self-funded Tort Liability Program

The Tribe shall self-fund its Tort Liabilities program and shall administer such program in accordance with accepted practice in the community, unless defined herein.

Section 3.02 Statute of Limitations for Filing Claims

All claims shall be filed with the Tribe within the following timelines:

- (1) All Tort Claims shall be filed with the Tribal Risk Management Office within 100 days of the alleged occurrence.
- (2) All appeals of a Tort Claim, following the completion of the Tribal Administrative Claim Process, shall be filed in Tribal Court within six (6) months of the date of denial or deemed denial.

Section 3.03 Limitations of Actions

- (1) This Ordinance does not provide for and does not include coverage for any Claim allegedly sustained by:
 - (a) A Tribal official, agent or employee in connection with his/her employment or performance of official duties;
 - (b) Any injury Proximately Caused by a negligent act that was committed outside the Course and Scope of Employment and/or authority of a Tribal official(s), employee(s), or agent(s); or
 - (c) 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.
 - (d) Any Claims regarding occurrences at the Tribe's Casino or actions of employees of the Tribe's casino. Claims against the Tribe's Casino and its employees shall be handled in accordance with Title 62: Casino Patron Protection Act.
 - (e) Any Claims for Punitive or Exemplary Damages, attorney's or expert's fees.

(f) Any Acts caused by a third party; such as any purported claim caused by a third party, including without limitation any injury allegedly arising from a claim for loss of consortium or any third-party claim, or equitable indemnity or contribution arising from third-party litigation.

(g) Acts within the scope of any governmental immunity;

- Discretionary Authority
- Official Immunity

(2) The Tribe specifically disclaims, and shall not be liable or responsible for, any actions or omissions committed by any guest of the Hoopa Reservation or any of the Tribe's facilities unless they are acting within the Course and Scope of Employment and/or authority of a Tribal official(s), employee(s), or agent(s).

Section 3.04 Referral of Claims to the Federal Tort Claims Process

The Tribe shall refer all Claims derived from injuries within the scope of the Federal Tort Claims Act or Self-Governance Activities to the Federal Tort Claims process and shall provide notice of such to the Claimant.

Section 3.05 Claim Format Generally

All Claims submitted to the Tribe shall be in writing on the Tribe's Administrative Claim Form, and shall include the following:

- (1) The name and address of the Claimant;
- (2) The address to which the person presenting the Claim desires notices to be sent;
- (3) The telephone number of the Claimant;
- (4) The date of birth of the Claimant;
- (5) The social security number of the Claimant;
- (6) The full and complete detail as to circumstances, dates and times, locations, employees causing the alleged Claim, witnesses, personnel and equipment involved in the alleged occurrence which gave rise to the alleged Tort Claim;

(7) A general description and amount claimed as a direct result of the alleged injury, including the estimated costs of any alleged injury, damage, or loss, insofar as it may be known at the time of the presentation of the Claim, and a formal demand for monetary damages.

(8) A signature of Claimant, or some person with personal knowledge of the Claim on the Claimants behalf.

Section 3.06 Amendment of Claim

A Claim may be amended at any time before the statute of limitations for filing the Claim or before the completion of the Tribal Administrative Claim Process, whichever is later, if the Claim, as amended, relates to the same occurrence which gave rise to the original Claim. The amended Claim shall be considered part of the original Claim for all purposes. If the Claim is amended during Step 4 or Step 5 of the Tribal Administrative Claim Process, it shall extend the time the Risk Manager has to investigate and make a determination regarding the Claim by 45 days from the date of receipt of the amended Claim.

Section 3.07 Applicable Law

All Claims under this Ordinance shall be governed by accepted common law practice within the Hoopa Valley Indian Reservation. In the event Hoopa Valley Indian Reservation common law does not address the underlying TORT, California Government Tort Law can be used as a non-binding source of reference. Provided however that nothing herein shall be construed as a waiver or limitation of the Tribe's sovereign immunity or consent to the jurisdiction in any court, forum, or venue other than as otherwise provided for under this Tort Ordinance."

Section 3.08 Remedies

(1) The Tribe shall not be liable for any alleged damages in excess of \$1,000,000 per occurrence.

(2) In no event should Tribe's liability exceed its policy limits.

(3) The Tribe, either in its Tribal Administrative Claim Process or Tribal Court, shall reject as unacceptable any Claim or legal action for Punitive or Exemplary Damages.

Section 3.09 Tribal Risk Management Office

The Risk Manager shall direct the activities of the Tribal Risk Management Office and shall have the following authority under this Title:

- (1) To conduct or otherwise secure the necessary investigation of all Claims with the full cooperation and assistance from Tribal staff within the timelines outlined above.
- (2) To communicate with Claimants on behalf of the Tribe, including prepare and forward appropriate written responses to Claimants.
- (3) To contract with a qualified third-party claims administrator, to provide for day-to-day Claims administration, investigation and payments in accordance with this Ordinance.
- (4) To meet and confer with the Tribe's excess insurance carrier as soon as it becomes apparent that a specific Claim may exceed Tribal self-insured retention.
- (5) To settle valid Tort Claims, as appropriate, up to \$30,000 per Claim.
- (6) To grant the third-party claims administrator \$10,000.00 Tort Claim settlement authority.
- (7) To direct that all settlements of Tort Claims in excess of \$30,000 or in extremely complex situations be brought before the Tribal Council, in executive session, for discussion and approval/denial.
- (8) To refer all Claims derived from injuries incurred within the scope of Self-Governance Activities to the Federal Tort Claims process in accordance with Section 3.04.
- (9) To not waive the sovereign immunity of the Tribe with regard to any Claims herein.

Section 3.10 Confidentiality

All investigations conducted by the Tribal Risk Management Office, or any third party contracted with the Tribal Risk Management Office for this purpose, is considered work-product for litigation purposes and not subject to public disclosure.

Section 3.11 Exclusive Remedy: This Ordinance provides the exclusive procedure, forum, and remedy for the pursuit of a claim for a Compensable Injury. Except as expressly provided herein, this Ordinance does not constitute a waiver of the sovereign immunity of the Hoopa Valley Tribe

or its officers, employees, and agents. The Hoopa Valley Tribe reserves all rights for itself and its officers, employees, and agents not expressly waived by this Ordinance.

SECTION IV: OTHER PROVISIONS

Section 4.01 Sovereign Immunity

Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Hoopa Valley Tribe or any of its entities, enterprises, officers, agents, or employees except to the extent of insurance coverage purchased and in effect at the time of the accrual of the Claim and in accordance with this Ordinance, provided that nothing herein shall authorize the award of attorney's fees or punitive or exemplary damages against the Hoopa Valley Tribe or any of its entities, enterprises, departments, programs, officers, agents, or employees. The sovereign immunity of the Hoopa Valley Tribe is waived only to the extent and in the court expressly provided in this Ordinance.

Section 4.02 Severability

If any part of this Ordinance is held to be invalid, the remainder shall remain in full force and effect to the maximum extent possible.

Section 4.03 Amendment

This Ordinance shall be amended in accordance with the Legislative Procedures Act.


Section 4.04 Effective Date

This Ordinance shall take effect upon its adoption by the Tribal Council.

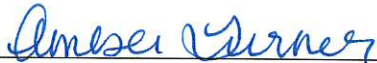
CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which eight (8) were present, constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened, and held this 24th day of November 2020; and that this Ordinance was duly adopted by a vote of seven (7) in favor with zero (0) opposed and zero (0) abstaining, and that said Ordinance has not been rescinded or amended in any way.

DATED THIS TWENTY-FOURTH DAY OF NOVEMBER 2020.



Byron Nelson Jr., Chairman
Hoopa Valley Tribal Council

ATTEST: 

Amber Turner, Executive Secretary
Hoopa Valley Tribal Council