

**Casino Patron Protection Act**  
**TORT CLAIMS ORDINANCE**  
Of The Hoopa Valley Tribe

**Title 62**

ORDINANCE NO: 02-00

DATE APPROVED: July 20, 2000 and October 1, 2021

SUBJECT: Tort Claims Procedures for Negligent Acts or Omissions by The Lucky Bear Casino, also known as the Casino Patron Protection Act.

WHEREAS: The Hoopa Valley Tribe adopted its Constitution and Bylaws on June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, confirmed and ratified by the United States Congress in October, 1988, in Public Law 100-580, the Hoopa-Yurok Settlement Act, and thereafter amended on June 18, 1996;

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and nonmember of the Hoopa Valley Indian Tribe;

WHEREAS: The Tribe has limited financial resources available to it to pay claims made against it for money or damages;

WHEREAS: To ensure a timely and effective means of resolving claims against the Tribe without the necessity of litigation, an administrative claims procedure needs to be established by the Tribe;

WHEREAS: An administrative claims procedure that requires the presentation of a claim to the Tribal Council, prior to filing suit against the Tribe, will reduce litigation against the Tribe, protect Tribal assets, and expedite the payment of legitimate claims and money damages due members of the public arising from breaches of contract or negligent acts of Tribal employees.

WHEREAS: The Hoopa Valley Tribe (Tribe) and the State of California (State) entered into a tribal-state gaming compact pursuant to the Indian Gaming Regulatory Act (25 U.S.C. § 2701 *et seq.*) in September, 1999;

WHEREAS: The voters of California approved Proposition 1A, on March 7, 2000, thereby amending the California Constitution to authorize the scope of gaming contained in the tribal-state gaming compact;

WHEREAS: The Tribe and the State agreed to an amended compact executed on September 10 and October 19, 2018 (Compact);

WHEREAS: The tribal-state gaming Compact, at section 12.5(a) requires the Tribe to maintain a public liability insurance policy for patron claims, to increase the liability limit from five to ten million dollars, and that the Tribe provide reasonable assurance that those claims will be promptly and fairly adjudicated, and that legitimate claims will be paid; and

WHEREAS: The tribal-state gaming Compact, at section 12.5(b), also requires the Tribe to adopt and make available to patrons a tort liability ordinance describing the procedures for processing any claims for money damages.

NOW, THEREFORE, BE IT RESOLVED THAT: the enactment of this Ordinance promotes the public health, safety, and welfare and is in the public interest.

BE IT FURTHER RESOLVED THAT: the Tribal Council hereby adopts the following Tort Claims Ordinance in order to comply with the requirements of the tribal-state gaming Compact to the extent those provisions are authorized by IGRA.

### **§ 62.1 SHORT TITLE**

This Ordinance shall be known as the Casino Patron Protection Act or Tort Claims Ordinance or Title 62.

### **§ 62.2 SCOPE**

The scope of application of this Ordinance shall be limited to claims arising out of negligent acts or omissions of the Lucky Bear Casino except for claims preempted by Tribal law including, but not limited to claims made pursuant to the Tribal Employment Rights Ordinance.

### **§ 62.3 PURPOSE**

The purpose of this Ordinance is to meet the Tribe's obligations under the Compact and to establish a timely and effective administrative procedure by which any person, who believes the Tribe owes them money as a result of an injury to person or property caused by a negligent act of a Tribal employee, is required to submit an Administrative Claim Form to the Tribal Risk Management Office in order for the Tribe to consider the merits of the claim and either approve or reject the claim as a precondition to the claimant filing a lawsuit against the Tribe.

### **§ 62.4 DEFINITIONS**

62.4.1 "Council" or "Tribal Council: means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.

62.4.2 An "Award" is the financial remedy offered a Claimant by the Tribal Council or Tribal Gaming Agency to resolve a Certified Claim timely filed under this Ordinance.

62.4.3 "Certified Claim" is a Claim that the Tribal Council has certified as complying with all procedural requirements and stating a prima facie case that a Claimant has sustained a compensable injury.

62.4.4 "Claim" is the written document, together with such supporting information as a Claimant may wish to provide, alleging a compensable injury to person or property that is prepared by the Claimant and delivered to the Tribal Council as provided herein.

62.4.5 "Claimant" is the individual who submits a Claim to the Tribal Council.

62.4.6 "Tribe" shall mean the Hoopa Valley Tribe, its departments and entities.

## **§ 62.5 PRESENTATION OF CLAIMS AS PRE-REQUISITE FOR FILING SUIT**

All claims against the Lucky Bear Casino for injury to person or property shall be presented to the Tribal Risk Management Office and acted upon as a prerequisite for filing a lawsuit thereon as further provided herein. All such claims shall be presented as required by this Ordinance and in the time periods specified herein.

## **§ 62.6 CLAIMS SUBJECT TO FILING REQUIREMENTS; STANDARD OF CONDUCT**

(A) The claims subject to the filing requirements under this Ordinance shall include, but not be limited to, any and all claims for injury to person or property as a result of the negligent act or omission of the Lucky Bear Casino; and any and all claims by any federal, state, or local public entity. The provisions of this Ordinance shall apply to any and all claims that relate to events, transactions, or occurrences that take place after the effective date of this Ordinance.

Except as prohibited by Section 62.22, the Tribe shall be liable for bodily injury, personal injury, or property damage arising out of, connected with, or relating to the operation of the Lucky Bear Casino, or related gaming operations or activities, including injuries resulting from entry onto the Tribe's land for purposes of patronizing the Lucky Bear Casino or gaming facilities or for purposes of providing goods or services to the Lucky Bear Casino or Gaming Facilities, only if the Tribe would be liable for such bodily injury, personal injury, or property damage under the tort law of the State of California, if the Tribe were subject to such law.

## **§ 62.7 CONTENT OF CLAIM**

Within 180 days of accrual, a Claim shall be presented by the Claimant or by a person acting on the Claimant's behalf and shall include the following:

- (A) the name and address of the Claimant;
- (B) the address to which the person presenting the Claim desires notices to be sent;
- (C) the date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
- (D) a general description of the indebtedness, obligation, injury, damage, or loss incurred so far as it may be known at the time of presentation of the Claim;
- (E) the name or names of the Tribal employee or employees causing the injury, damage, or loss, if known; and
- (F) the amount claimed as of the date of presentation of the Claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the Claim, together with the basis of computation of the amount claimed.

#### **§ 62.8 SIGNATURE OF CLAIMANT**

The Claimant, or some person with personal knowledge of the Claim on the Claimant's behalf, shall sign the Claim.

#### **§ 62.9 FORMS**

The Tribal Council may provide forms specifying the information to be contained in claims against the Tribe or any of its business enterprises. If the Tribal Council provides forms pursuant to this Section, the person presenting the Claim need not use such form if he/she presents his/her Claim in conformity with Sections 62.7 and 62.8. A Claim presented on a form provided pursuant to this Section shall be deemed to be in conformity with Sections 62.7 and 62.8, if the Claim complied substantially with the requirements of the form or with the requirements of said Sections.

#### **§ 62.10 AMENDMENT OF CLAIM; EFFECT OF FAILURE OR REFUSAL TO AMEND**

A Claim may be amended at any time before the expiration of the period designated in Section 62.13 or before final action thereon is taken by the Tribe, whichever is later, if the Claim, as amended, relates to the same transaction or occurrence which gave rise to the original Claim. The amendment shall be considered a part of the original Claim for all purposes.

#### **§ 62.11 NOTICE OF INSUFFICIENCY OF CLAIM**

If, in the sole discretion of the Tribal Council for the Tribe or the person designated by it, a Claim as presented fails to comply substantially with the requirements of this Ordinance or the requirements of a form provided under this Ordinance, the Tribal Council for the Tribe or such

person may, at any time within twenty (20) days after the Claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. Such notice shall be given in the manner prescribed by this Ordinance. The Tribal Council for the Tribe may not take action on the Claim for a period of fifteen (15) days after such notice is given.

**§ 62.12 FAILURE TO GIVE NOTICE OF INSUFFICIENCY; WAIVER OF DEFENSE BASED ON DEFECT OR OMISSION**

Any defense as to the sufficiency of the Claim based upon a defect or omission in the Claim as presented is waived by failure to give notice of the insufficiency with respect to such defect or omission as provided in Section 62.11, except that no notice need be given and no waiver shall result when the Claim, as presented, fails to state either an address to which the person presenting the Claim desires notice to be sent or an address of the Claimant.

**§ 62.13 TIME FOR PRESENTATION OF CLAIM; NOTICE TO CLAIMANT**

(A) A Claim relating to a cause of action for death or for injury to a person or to personal property shall be presented as provided for in this Ordinance, not later than 180 days after the accrual of the cause of action.

(B) In accordance with Compact, section 12.5(c), upon written notice that a Claimant claims to have suffered an injury or damage covered by Compact, section 12.5, the Tribe shall provide notice by personal service or certified mail, return receipt requested, that the Claimant is required within the 180-day limitation period to file his or her Claim, exhaust administrative remedies, if any, and, if dissatisfied with the resolution, is entitled to the appeal in accordance with the procedures set forth below.

**§ 62.14 GRANT OR DENIAL OF CLAIM BY TRIBE**

(A) The Tribe shall grant or deny the Claim within the sixty (60) days after it is presented to the Tribe. The claimant and the Tribe may extend the period within which the Tribe is required to act on the Claim by written agreement made before the expiration of such period.

(B) If the Tribe fails or refuses to act on the claim within the time prescribed by this Section, the Claim shall be deemed to have been denied on the sixtieth day or, if the period within which the Tribe is required is extended by agreement, pursuant to this Section, the last day of the period specified in such agreement.

**§ 62.15 NOTICE OF REJECTION OF CLAIM**

(A) Written notice of the rejection of the Claim or the Tribe's inaction on the Claim, which is deemed a rejection of the Claim under this Ordinance, shall be given in a manner provided in Section 62.16. Such notice may be in substantially the following form:

“Notice is hereby given that the claim which you presented to the Hoopa Valley Indian Tribe on \_\_\_\_\_ [indicate date] was [indicate whether rejected, allowed, allowed in the amount of \$ \_\_\_\_\_ and as rejected as to the balance, rejected by operation of law, or other appropriate language, whichever is applicable] on [indicate date of action or rejection by operation of law].”

(B) If the Claim is rejected in whole or in part, the notice required by Subdivision (A) above shall include a warning in substantially the following form:

**“WARNING”**

If your claim was based upon death or injury to a person or personal property, you only have six months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim before the Hoopa Valley Tribal Court. You may seek the advice of an attorney of your choice at your own expense in connection with this matter. If you desire to consult an attorney, you should do so immediately.”

**§ 62.16 MAILING OR SERVICE OF NOTICE**

The notice required by Section 62.15 shall be deemed given when it is either: (1) personally delivered to the Claimant or the Claimant’s representative as specified in the claim or (2) when deposited in the United State mail addressed to the Claimant or the Claimant’s representative as specified in the Claim, first class postage prepaid.

**§ 62.17 RE-EXAMINATION OF REJECTED CLAIM**

The Tribe may, in its discretion, within the time described by Section 62.15 for commencing an action on the Claim, re-examine a previously presented claim in order to consider a settlement of the Claim.

**§ 62.18 TRIBAL COURT AUTHORITY**

The Hoopa Valley Tribal Court shall have exclusive jurisdiction to adjudicate actions commenced pursuant to this Ordinance. Any action commenced pursuant to this Ordinance shall be initiated in accordance with the applicable rules of the Hoopa Valley Tribal Courts, and shall be of no cost to the Claimant (excluding Claimant’s attorney’s fees). The Hoopa Valley Tribal Court shall have authority to determine the following issues: 1) the Tribe’s rejection of a claim for failure to timely comply with the procedures established in this Ordinance or allege a compensable injury; 2) the Tribe’s or Tribal Gaming Agency’s denial of a Certified Claim for a Claimant’s failure to establish by a preponderance of evidence that the Tribe is liable to the Claimant on a Certified Claim; 3) the adequacy of an Award granted on a Certified Claim; or 4)

the failure of the Tribe or its insurer to timely pay an Award. **§ 62.19 EXHAUSTION OF ADMINISTRATIVE REMEDIES**

To be entitled to seek judicial review of Tribal action to deny, reject, or modify a Claim, or otherwise fail to pay a Claim pursuant to this Ordinance, the Claimant must first exhaust their administrative remedies as provided by this Ordinance. Failure to comply with the administrative requirements of this Ordinance is a jurisdictional defect and the Hoopa Valley Tribal Court shall deny any relief requested for lack of jurisdiction.

**§ 62.20 LIMITATION OF ACTIONS**

This Ordinance does not provide for and does not include coverage for any injury allegedly sustained by a Tribal official, agent or employee in connection with his/her employment or performance of official duties, any injury allegedly sustained by a Tribal member or any person eligible for enrollment in the Tribe, any claim for punitive or exemplary damages, any injury proximately caused by a negligent act that was committed outside the course and scope of the employment and/or authority of a Tribal official(s), employee(s) or agent(s) whose act(s) or omission(s), or any injury proximately caused by the act or omission of any person who is not an officer, employee or agent of the Tribe or who is not otherwise directly subject to the Tribe's direction, supervision or control. For the purposes of this Ordinance, a Claim may not be certified if the person or entity alleged to have been the proximate cause of a compensable injury was not, at the time the injury was sustained, either an elected or appointed official of the Tribe, an employee or agent of the Tribe, or party to a contract with the Tribe in connection with the operation or maintenance of a Tribal Gaming Facility. The Tribe specifically disclaims, and shall not be liable or responsible for, any acts or omissions committed by any person of a Tribal Gaming Facility.

**§ 62.21 STATUTE OF LIMITATION**

Claimant shall file any lawsuit pursuant to this Ordinance within six months of the date the notice of rejection of Claim, modification of Claim or other failure to pay the Claimant was personally delivered, or deposited in the mail for delivery, to Claimant or upon the date that such determination occurred by operation of law.

**§ 62.22 ATTORNEYS' FEES AND PUNITIVE DAMAGES**

Nothing herein shall be construed as authorizing the award of attorneys' fees or punitive damages as against the Tribe or any of its enterprises, officers, agents or employees.

**§ 62.23 LIMITATION ON ATTORNEYS' FEES**

No attorney representing a Claimant pursuant to this Ordinance shall charge, demand, receive or collect from the Claimant for services rendered on the Claim, fees in excess of twenty-five percent (25%) of any judgment, settlement, or award rendered or paid by the Tribe or its insurer

to the Claimant. Each attorney who appears on behalf of a Claimant must be admitted to the Hoopa Valley Tribal Bar.

#### **§ 62.24 AWARD LIMITED TO POLICY LIMITS**

The Tribe shall not be obligated to pay any award that is not covered by, or exceeds the policy limits of, the Tribe's liability insurance. The limits of the Tribe's liability insurance policy shall not be less than \$10,000,000 per occurrence for bodily injury, personal injury or property damage directly arising out of, connected with, or relating to the operation of the Gaming Facilities. The Tribe's insurer shall pay any cognizable award in the same manner and at the same time as judgments rendered in the courts of the United States.

#### **§ 62.25 APPEALS**

The Claimant may appeal a final decision as to liability or the amount of damages awarded, based upon the evidentiary record presented to the Hoopa Valley Tribal Court in accordance with the rules regarding filing of appeals in the Hoopa Valley Tribal Court system.

#### **§ 62.26 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.

#### **§ 62.27 SOVEREIGN IMMUNITY**

Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Hoopa Valley Indian Tribe or any of its enterprises, officers, agents, or employees, except to the extent of insurance coverage in effect at the time of the accrual of the Claim, provided that nothing herein shall authorize the award of attorney's fees or punitive damages against the Hoopa Valley Indian Tribe or any of its enterprises, officers, agents, or employees.

#### **§ 62.28 EFFECTIVE DATE; AMENDMENT**

This amended Ordinance shall take effect upon its adoption by the Council and shall have retroactive effect to December 27, 2019. This Ordinance may be amended as provided by and in accordance with the Legislative Procedures Act.



## 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 seven (7) were poll voted, constituting a quorum and held this 29<sup>th</sup> day of September 2021 and approved this 1<sup>st</sup> day of October 2021 thereof; and was reaffirmed at a Regular Meeting held October 7, 2021; and this Ordinance was duly adopted under the Emergency LPA process, Title 6 of the Hoopa Valley Tribe. The Hoopa Valley Tribe composed of eight (8) members, of which seven (7) were present, constituting a quorum at a Regular Meeting thereof, duly and regularly called, noticed, convened and held this 4<sup>th</sup> day of November 2021; and final approval occurred and this Ordinance was duly adopted by a vote of six (6) 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 fourth day of November 2021.



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Joe Davis, Chairman  
Hoopa Valley Tribal Council

Attest:



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Amber Turner, Executive Secretary  
Hoopa Valley Tribal Council