

ORDINANCE NO. 03-02

**AN ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE
RANCHERIA OF CALIFORNIA ENACTING A TRIBAL ORDINANCE
ENTITLED "TRIBAL CLAIMS ORDINANCE"**

The Business Council for the Blue Lake Rancheria of California ("Tribe") hereby ordains as follows:

Section 1. Findings and Declarations. The Business Council for the Tribe finds and declares that:

1. The Tribe has limited financial resources to pay claims made against it for money or damages.
2. 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.
3. An administrative claims procedure that requires the presentation of a claim to the Business Council prior to filing suit against the Tribe, will reduce litigation against the Tribe, protect the Tribe's assets, and expedite the payment of legitimate claims and money damages due members of the public arising from breaches of contract or the negligent acts of the Tribe's employees.
4. The purpose of this Ordinance is to establish an administrative procedure by which any person who believes the Tribe owes him or her money as a result of a breach of contract or damage to person or property will be required to submit an administrative claim to the Business Council. Such a procedure will allow the Business Council to consider the merits of any claim and either approve or reject the claim as a precondition to the claimant filing a lawsuit against the Tribe.
5. The enactment of this Ordinance promotes the health, safety, and welfare of the Tribe, its members, and the public and is in the public interest.

Section 2. Adoption of New Ordinance Entitled: "Tribal Claims Ordinance". A new Ordinance Entitled "Tribal Claims Ordinance" is hereby adopted by the Blue Lake Rancheria of California and shall provide as follows:

TRIBAL CLAIMS ORDINANCE

Sections:

- 1.010 Presentation of Claims as Prerequisite to Filing Suit.
- 1.020 Claims Subject to Filing Requirements.
- 1.030 Contents of Claim.
- 1.040 Signature of Claimant.
- 1.050 Forms.
- 1.060 Amendment of Claim;.
- 1.070 Notice of Insufficiency of Claim.
- 1.080 Effect of Failure or Refusal to Amend
- 1.090 Failure to Give Notice of Insufficiency; Waiver of
Defense Based on Defect or Omission.
- 1.100 Time Limits for Presentation of Claims.
- 1.110 Grant or Denial of Claim by Business Council.
- 1.120 Notice of Denial of Claim.
- 1.130 Mailing or Service of Notice.
- 1.140 Re-examination of Rejected Claim.
- 1.150 Sovereign Immunity.

1.010 Presentation of Claims as Prerequisite to Filing Suit. Except for claims for injury or damage arising out of the Tribe's Gaming Enterprise which are subject to the Blue Lake Rancheria of California Tort Claims Ordinance, all other claims against the Tribe or any of its business enterprises for money or damages shall be presented to the Business Council and acted upon as a prerequisite to suit thereon as further provided in this Ordinance. All such claims shall be presented as required by this Ordinance and within the time periods specified herein.

1.020 Claims Subject to Filing Requirements. The claims subject to the filing requirements under this Section shall include, but not be limited to, any and all claims for money or damages; any and all claims by Tribal employees for fees, salaries, wages, mileage, or other expenses and allowances, and any and all claims by any federal, state, or local public entity. The provisions of this Section shall apply to any and all claims whether they relate to events, transactions, or occurrences that took place prior to or after the effective date of this Ordinance. Claims subject to the Blue Lake Rancheria Tort Claims Ordinance, governing the presentation and adjudication of tort claims arising out of the operation of the Tribe's Casino Enterprise, are not subject to the filing requirements of this Ordinance, but must be presented and adjudicated in accordance with the provisions of that ordinance as it now reads or as it may be amended or replaced.

1.030 Contents of Claim. A claim shall be presented by the claimant or by a person acting on the claimant's behalf and shall include the following: (1) the name and address of the claimant; (2) the address to which the claimant desires notices to be sent; (3) the date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted; (4) 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; (5) the name or names of the Tribal employee or employees causing the injury, damage, or loss, if known; and (6) 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.

1.040 Signature of Claimant. The claim shall be signed by the claimant or a person on the claimant's behalf. Claims against the Tribe or any of its business entities for supplies, materials, equipment, or services need not be signed by the claimant or on the claimant's behalf if presented on a bill-head or invoice regularly used in the conduct of business of the claimant.

1.050 Forms. The Business Council may provide forms specifying the information to be contained in claims against the Tribe or any of its business enterprises. If the Business Council provides forms pursuant to this Section, the claimant need not use such form if he/she presents his/her claim in conformity with Sections 1.030 and

1.040. A claim presented on a form provided pursuant to this Section shall be deemed to be in conformity with Sections 1.030 and 1.040, if the claim complies substantially with the requirements of the form or with the requirements of said Sections.

1.060 Amendment of Claim. A claim may be amended at any time before the expiration of the period designated in Section 1.090 or before final action thereon is taken by the Business Council, 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.

1.070 Notice of Insufficiency of Claim. If, in the sole discretion of the Business Council or a person designated by the Business Council to evaluate the claim, a claim as presented fails to comply substantially with the requirements of this Ordinance or the requirements of the form provided under this Ordinance, the Business Council or such designated 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. Where such notice is given, the claimant shall have 15 days to amend the claim. The Business Council may not take action on the claim during that time.

1.080 Effect of Failure or Refusal to Amend. If, within 15 days of the giving of notice of the insufficiency of his or her claim, the claimant fails or refuses to amend his or her claim, the claim shall be deemed denied.

1.090 Failure to Give Notice of Insufficiency; Waiver of Defense Based on Defect or Omission. Any defense based on the insufficiency of a claim resulting from a defect or omission in the claim as presented is waived by the failure on the part of the Tribe to give notice of the insufficiency as provided in Section 1.070, 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 claimant desires notice to be sent or an address of the claimant.

1.100 Time Limits for Presentation of Claims. 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 the ninetieth (90th) day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented, as provided in this Ordinance not later than one hundred eighty (180) days after the accrual of the cause of action.

1.110 Grant or Denial of Claim by Business Council.

(A) The Business Council shall grant or deny any claim within sixty (60) days after the claim is presented to the Business Council. The claimant and the Business Council may extend the period within which the Business Council is required to act on the claim by written agreement entered into before the expiration of such period.

(B) If the Business Council 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 Business Council is required to act is extended by agreement pursuant to this Section, on the last day of the period specified in such agreement.

1.120 Notice of Denial of Claim.

(A) Written notice of the rejection of the claim or the Business Council's inaction on the claim, which is deemed a rejection of the claim by operation of law under this Ordinance, shall be given in the manner provided in Section 1.130. Such notice shall be in substantially the following form:

"Notice is hereby given that the claim which you presented to the Business Council of the Blue Lake Rancheria of California on [indicate date] was [indicate whether rejected, allowed, allowed in the amount of \$_____ and 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 have ninety (90) days from the date this notice was personally delivered or deposited in the mail to file a court action on this claim, otherwise, you have one hundred eighty (180) days from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately."

1.130 Mailing or Service of Notice. The notice required by Section 1.110 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 States mail addressed to the claimant or the claimant's representative as specified in the claim, first class postage prepaid.

1.140 Re-examination of Rejected Claim. The Business Council may, in its discretion, within the time described by Section 1.090 for commencing a court action on the claim, re-examine a previously presented claim in order to consider a settlement of the claim.

1.150 Sovereign Immunity. Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Blue Lake Rancheria of California or any of its enterprises, officers, agents, or employees.

Section 3. Effective Date, Publication. This Ordinance shall take effect immediately after its adoption.

CERTIFICATION

The foregoing Ordinance was adopted at a regular meeting of the Business Council, with a quorum present, held on March 6 2002, by the following vote:

AYES: 5
NOES: 0
ABSTAIN: 0
ABSENT: 0



Claudia Brundin, Chairperson

ATTESTED:



Secretary to the Business Council

ORDINANCE NO. 03-02

AN ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA ESTABLISHING A TRIBAL TORT CLAIMS ORDINANCE FROM CLAIMS ARISING FROM THE OPERATION OF THE BLUE LAKE CASINO

The Business Council of the Blue Lake Rancheria of California hereby ordains as follows.

I. TITLE.

This Ordinance shall be entitled the “ Blue Lake Rancheria of California CasinoTort Claims Ordinance.”

II. FINDINGS.

A. The gaming enterprise of the Blue Lake Rancheria of California (“Tribe”) relies on the trust and confidence of its patrons.

B. The Tribe desires that patrons of the Tribe’s gaming enterprise feel safe and secure when on the premises of that enterprise. To that end, the Tribe wants patrons to know that recourse is available to persons who suffer injuries while on the premises of the Tribe’s gaming enterprise.

C. The Tribe endeavors to take all reasonable precautions to protect the health, safety and welfare of Reservation visitors and patrons of tribal business enterprises, but despite these efforts, accidents occasionally occur.

D. Subject to the limitations and conditions set forth in this Ordinance, the Tribe desires to create a remedy to provide compensation to any person who is injured or whose property is damaged on the Reservation as a result of the negligence or intentional misconduct of any officer, employee, or agent of the Tribe, acting in such capacity.

E. The Tribe desires and intends by the enactment of this Ordinance to comply with Section 10.2(d) of the Gaming Compact between the Blue Lake Rancheria and the State of California, approved by the United States Secretary of Interior on May 5, 2000, and published in the Federal Register on May 16, 2000.

III. PURPOSE.

The purposes of this Ordinance are:

A. To set forth the terms and conditions under which the Tribe will grant a limited waiver of its sovereign immunity to suit but only in the forum or forums as identified in this Ordinance, and not otherwise, solely on claims for money damages resulting from injuries to persons or property at the Tribe’s Gaming Facility or in connection with the Tribe’s Gaming Operation;

B. To establish procedures for the prompt and fair adjudication of any claims against the Tribe subject to this Ordinance, and assuring payment of claims determined to be legitimate; and

C. To establish liability insurance requirements for the Tribe’s Gaming Enterprise;

IV. DEFINITIONS.

“Arbitration Panel” is the impartial person or entity to whom the Tribe has assigned the authority and responsibility to review and decide appeals from: 1) the Business Council’s rejection of a claim for failure to timely comply with the procedures established in this Ordinance or allege a Compensable Injury; 2) the Business Council’s denial of a Certified Claim for a Claimant’s failure to establish by a

preponderance of the evidence that the Tribe is liable to the Claimant on a Certified Claim; the adequacy of an Award granted by the Tribal Council on a Certified Claim; or 4) the failure of the Tribe or its insurer to timely pay an Award. The Arbitration Panel may be a tribal court, if the Tribe establishes a tribal court with jurisdiction to hear and decide such matters.

“Award” is the financial remedy offered a Claimant by the Business Council to resolve a Certified Claim timely filed under this Ordinance.

“Blue Lake Rancheria of California” is the federally recognized Indian tribe with jurisdiction over the Blue Lake Rancheria. The provisions of this Ordinance will also refer to to the Blue Lake Rancheria of California as the “Tribe.”

“Blue Lake Rancheria ” is all those lands within the exterior boundaries of the Blue Lake Rancheria in Humboldt County, California, as described in the 1983 Stipulation for Entry of Judgment in Hardwick v. United States (Fed. Dist. Ct., N.D.Cal.) 1710 SW, and as restored as Indian country by the Stipulation for Entry of Judgment in Hardwick, signed by Humboldt County and the United States on March 27, 1986, and any lands held in trust for the Tribe by the United States.

“Business Council ” is the Business Council and governing body of the Tribe, as established by the Tribe’s constitution.

“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.

“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.

“Claimant” is the individual who submits a Claim to the Tribal Council.

“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.

“Compensable Injury” is an injury to person or property that occurs on the premises of the Tribe’s Gaming Facility or in connection with the Tribe’s Gaming Operation, the proximate cause of which was the negligent or intentional act of a Tribal official, agent or employee acting in the course and scope of his/her employment by the Tribe and within the scope of his/her authority. “Compensable Injury” does any claim listed in sections VI or VII of this Ordinance.

“Gaming Facility” is any building in which Class III gaming activities or gaming operations occur on Indian lands over which the Tribe exercises jurisdiction.

“Gaming Operation” is any business enterprise owned by the Tribe that offers and operates Class III gaming activities on Indian lands over which the Tribe exercises jurisdiction.

“Rejected Claim” is a Claim that the Tribe cannot certify because Claimant has failed to comply with one or more procedural requirements as provided herein, including deadlines for filing claims or evidence supporting a claim.

V. CLAIMS COVERED BY THIS ORDINANCE.

A. This Ordinance creates both procedures and substantive rights or causes of action for redress of injuries to person or property proximately caused by the negligent or intentional act(s) or omission(s) by an officer,

employee or agent of the Tribe on the premises of the Tribe's Gaming Facility or in connection with the operation of the Tribe's Gaming Operation.

B. Except as otherwise specifically provided in this Ordinance, the Tribe shall be liable for torts in the same manner and to the same extent as the United States would be liable under like circumstances pursuant to 28 U.S.C. §2674 (the Federal Tort Claims Act).

D. The Tribe may be determined to be liable for injury caused by a dangerous condition of its property only if the claimant establishes that the Tribal property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury that was incurred, and that either:

- (1) a negligent or wrongful act or omission of an officer, employee, or agent within the scope of his or her office, employment, or agency created the dangerous condition; or
- (2) the Tribe had actual knowledge or constructive notice of the dangerous condition and sufficient time prior to the injury to have taken measures to remedy or protect against the dangerous condition.

The Tribe shall not be liable for injury or damage caused by a condition of its property if it establishes 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 Claimant knew or reasonably should have been aware of the condition prior to sustaining the injury upon which the Claim is based.

E. In claims for wrongful death, the Tribe shall be 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, and shall be limited to \$300,000. 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.

VI. CLAIMS EXCLUDED BY THIS ORDINANCE.

A. This Ordinance does not provide any remedy or forum for alleged injuries caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization.

B. This Ordinance does not provide any remedy or forum for alleged damages or injuries arising from actual or prospective contractual relationships between the Tribe and other parties.

C. This Ordinance does not provide any remedy or forum for claims against the Tribe for equitable indemnity or contribution arising from third party litigation.

D. This Ordinance does not provide any remedy or forum for claims against the Tribe for punitive or exemplary damages.

E. This Ordinance does not provide any remedy or forum for: (1) any injury allegedly sustained by a Tribal official, agent or employee in connection with his/her employment or performance of official duties, (2) 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 a Tribal official, employee or agent whose negligence or intentional misconduct are alleged to have caused the injury, (3) any injury proximately caused by the act or omission of any person who is not an officer, employee or agent of the Tribe, (4) any injury proximately caused by a bona fide independent contractor of the Tribe, or (5) an injury proximately caused by any acts or omissions committed by any patron of a Tribal gaming facility.

F. This Ordinance does not provide any remedy or forum for claims for damages in excess of Five Million Dollars (\$5,000,000.00), or to the extent that such damages are not covered by insurance required under the terms of the Tribe's Compact.

VII. RECOGNIZED TRIBAL DEFENSES

A. With respect to any Claim to which this Ordinance applies, the Tribe 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 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 any act or omission of an officer, employee, or agent that was the result of the good faith exercise of the discretion vested in him or her, or a result of the good faith execution or enforcement of any Tribal, federal, or California ordinance, resolution, law, or rule.

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

VIII. EXCLUSIVE REMEDY.

A. This Ordinance provides the exclusive procedure, forum, and remedy for pursuit of claims for injury to or loss of property, personal injury or death. Except as expressly provided herein, this Ordinance does not constitute a waiver of the sovereign immunity of the Tribe or its officers, employees, and agents, and the Tribe reserves all rights for itself and its officers, employees, and agents not expressly waived by this Ordinance.

B. If any California or federal court construes this Ordinance to constitute a waiver, in whole or in part, of the Tribe's sovereign immunity except in strict accordance with the terms of this Ordinance, this Ordinance shall immediately and without further action become null and void, retroactive to the day prior to the incident or occurrence giving rise to such judicial decision.

IX. FINALITY.

A. Except as otherwise expressly provided herein, any Award, compromise, settlement, or determination of a Claim under this Ordinance must be in writing and approved by the Business Council.

B. Any Award, compromise, settlement, or determination of a Claim under this Ordinance shall be final and conclusive on the Tribe, except when procured by means of fraud, and subject to the Claimant's right to have the rejection or denial of a Claim or an Award reviewed by an Arbitration Panel. The determination of an Arbitration Panel shall be final and conclusive upon both the Claimant and the Tribe. The decision of an Arbitration Panel may be enforced in the United States District Court for the Northern District of California under the Federal Arbitration Act, 9 U.S.C. §1, et seq.; provided, however, that neither an Arbitration Panel nor any court shall have jurisdiction to award damages against the Tribe that are not covered by a policy of liability insurance required under the Compact, or in an amount that exceeds the limits of such policy. If the federal court does not have jurisdiction, an action to enforce a decision of the Arbitration Panel may be filed in the Humboldt County Superior Court. If the Tribe has established a tribal court, the enforcement of tribal court judgments shall be governed by the ordinances, court rules and procedures governing the judgments of that court, and not by the previous sentences in this subsection B.

C. The acceptance by a Claimant of any Award, compromise, settlement, or determination of a Claim shall be final and conclusive on the Claimant. Said acceptance shall constitute a complete release of any present or future claim arising from the same or connected circumstances by the Claimant against the Tribe and its 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 to the claimant when the claimant accepted the settlement.

X. PRESENTATION OF CLAIMS.

A. Contents of the Claim. A Claimant or his or her representative must file a written Claim presenting all material facts relating to the alleged incident and injury. Upon request to the Tribal Gaming Agency, a claim form will be provided, but a Claimant need not use that form so long as all of the information required by that form is provided. At a minimum, the written Claim must contain the following:

- (1) the name, mailing address, and telephone number of the Claimant;
- (2) the date, location, and detailed account of the alleged incident or occurrence that gave rise to the Claim;
- (3) the identity or description of all persons involved in the incident or occurrence that gave rise to the Claim;
- (4) the identity or description of all witnesses to the incident or occurrence that gave rise to the Claim;
- (5) the alleged damage or injury suffered, and the compensation requested as of the date of the presentation of the Claim, including the estimated amount of any prospective injury, damage, or loss, together with the basis of computation of the amount claimed; and
- (6) all supporting documentary evidence and written witness statements the claimant intends to rely on.

In the event that the Claimant does not possess complete information about the Claim when the Claim is presented, the Claim shall identify the information that Claimant lacks, set forth the reason(s) why the information cannot be presented with the initial submission of the Claim and request that the Claimant's time to complete submission of the Claim be extended by the amount of time, not to exceed 180 days from the date of initial submission, that Claimant anticipates will be required to obtain and submit the additional information.

B. Penalty of Perjury. The Claim must be signed by the Claimant under penalty of perjury. If the Claimant is unable to sign the Claim because of physical or mental incapacity, or because the Claimant is deceased, the Claim must be signed under penalty of perjury by another person with personal knowledge of the contents of the Claim.

C. Time Limits on Filing Claim. Claimant must file his/her Claim with the Business Council, either by personal delivery, certified U.S. mail, return receipt requested, or overnight courier with proof of delivery requested. The current address street address is ⁴²⁸ ~~Clarkin~~ *Clarkin*. To be timely submitted, the Claim must be received by the Business Council no later than one hundred eighty (180) calendar days after the date of the alleged incident or occurrence, unless this period is extended by written agreement of the Tribe before the expiration of that initial period or the Claimant was physically or mentally incapable of submitting the Claim within that period. If the 180th day falls on a Saturday, Sunday, or officially-recognized federal, or Tribal holiday, the 180th day shall be deemed to be the next business day. This time limit is jurisdictional and shall be strictly construed to preclude late-filed Claims. If the Claim was not timely filed due to the physical or mental incapacity of the Claimant, the Claim must be accompanied by a declaration under penalty of perjury by the Claimant's treating physician attesting to the date upon which Claimant became incapacitated and the date upon which Claimant regained capacity, or an order of a court of competent jurisdiction to the same effect. The time for filing a Claim will be tolled during the period of incapacity so established. Otherwise, the Tribe may relieve a Claimant of untimeliness, at the Tribe's sole discretion, only if such untimeliness was a result of excusable neglect.

D. Amending and Supplementing Claims. Unless a Claimant has requested and obtained from the Business Council leave to supplement his/her Claim, a Claimant may amend or supplement the Claim at any time within one hundred eighty (180) calendar days of the alleged incident or occurrence upon which the Claim is based, but only if the amendment relates to the same transaction or occurrence that gave rise to the original claim.

Thereafter, the Claimant may amend the Claim only with the consent of the Business Council or its designated representative.

XI. CERTIFICATION OR REJECTION OF CLAIMS.

A. Within thirty (30) calendar days of the receipt of a Claim, the Business Council or its designated representative shall determine whether:

- (1) the Claim was received by the Business Council within one hundred eighty (180) calendar days of the alleged incident or occurrence;
- (2) the Claim as presented substantially complies with the above-described content requirements and is signed under penalty of perjury;
- (3) the incident or occurrence alleged by the Claim occurred on the premises of the Tribe's Gaming Facility or in connection with the operation of the Tribe's Gaming Enterprise;
- (4) the alleged injury or damage may have been the proximate result of a negligent or wrongful act or omission of any officer, employee, or agent of the Tribe, or that such act or omission may have been a contributing cause of the alleged injury or damage; and
- (5) the Claim seeks a remedy created by and available under this Ordinance.

These determinations shall be made solely for the purpose of certifying the Claim for further proceedings, and shall not constitute a determination of the merits of the Claim.

B. If the Claim does not meet one or more of the above-listed requirements, the Claim will not be certified. In such case the Tribe or its designated representative shall send to the Claimant a written "Rejection of Claim" stating all grounds for the Tribe's failure to certify the claim. A Claim that is neither rejected nor certified by the Business Council within sixty (60) days after receipt of the Claim by the Business Council shall be deemed to have been denied.

C. A Claimant may appeal a Rejection of Claim by submitting a notice of appeal to the Tribal Gaming Agency within thirty (30) calendar days of the date of issuance of the Rejection of Claim, or, if no such notice is issued, within ninety (90) days after the Claim was delivered to the Tribe. The Notice of Appeal shall be accompanied by payment of a fee of one hundred twenty dollars (\$120). The Tribal Gaming Agency then shall be responsible for convening an arbitration panel to review the rejection. The Claimant and the Tribal Gaming Agency each shall deposit one-half of the fees and costs for the Arbitration Panel before the panel is convened. The prevailing party on appeal shall be entitled to a refund of its portion of the advanced fees and costs, and the non-prevailing party shall be obligated to pay the balance of the fees and costs of the Arbitration Panel. The Claimant shall have the burden of proving by a preponderance of admissible evidence that rejection of the Claim was improper. All proceedings on such an appeal shall be conducted on the basis of written declarations under penalty of perjury, properly authenticated documentary evidence and written arguments, in accordance with a schedule and procedural rules to be established by the Arbitration Panel. No discovery shall be allowed in such a proceeding. The Arbitration Panel shall render its decision within ninety (90) days after the Arbitration Panel has been convened.

D. If the Claim is certified, the Tribe or its designated representative shall send to Claimant no later than the sixty-fifth (65th) calendar day after the receipt of the Claim a written "Certification of Claim." The Claim thereupon shall be forwarded to the Business Council or its designated representative for such investigation and fact finding as is reasonably necessary to evaluate the merits of the Claim. In the absence of extraordinary circumstances such as the unavailability of witnesses or non-cooperation of repositories of information, investigation of the Claim should be concluded within sixty (60) days after the Claim is certified.

XII. CLAIM INVESTIGATION AND RESOLUTION.

A. Upon certification of a Claim, the Business Council shall refer the Claim to the Tribal Gaming Agency.

B. If a Certified Claim on its face alleges special or general damages of one hundred thousand dollars (\$100,000) or less, the Tribal Gaming Agency shall be authorized to render a final decision on the Claim, which decision shall be binding on the Tribe and its insurer. For Certified Claims alleging special or general damages in excess of one hundred thousand dollars (\$100,000), the Business Council shall render the final decision, based upon findings of fact, conclusions of law and the recommended decision of the Tribal Gaming Agency.

C. If requested by the Claimant, the Tribal Gaming Agency shall conduct an evidentiary hearing at which the Claimant may appear and present oral testimony and documentary evidence in support of his/her claim. In its discretion, the Tribal Gaming Agency may delegate the actual conduct of the hearing to a presiding officer, who may either be a member of the Tribal Gaming Agency or a third-party neutral retained through the American Arbitration Association or other alternative dispute resolution agency or entity. The Tribal Gaming Agency shall be authorized to prescribe rules of practice and procedures for the presentation and hearing of Certified Claims. Unless good cause to the contrary is found to exist, the Tribal Gaming Agency shall convene the evidentiary hearing within one year after receiving the Claimant's request for a hearing.

D. The Tribal Gaming Agency shall permit such pre-hearing discovery as it may deem reasonably necessary to ensure presentation of sufficient information to enable the Tribal Gaming Agency to ascertain the relevant facts and applicable law. The Federal Rules of Civil Procedure shall be used as a guideline for the conduct of discovery, although the Tribal Gaming Agency need not adhere in every respect to those Rules in authorizing depositions, written interrogatories and production of other forms of evidence. The Tribal Gaming Agency or its authorized hearing officer is hereby authorized to issue and enforce subpoenas to compel the testimony of witnesses and the inspection and production of records, documents, property or persons, including tests and medical examinations.

E. At the evidentiary hearing, a representative of the Tribe or the Tribe's insurer may cross-examine any witnesses presented by the Claimant, and offer rebuttal evidence. The Claimant shall be entitled to cross-examine any witnesses presented by the Tribe or the Tribe's insurer. Admissibility of evidence shall be determined in accordance with the Federal Rules of Evidence, and the Claimant shall have the burden of proving by a preponderance of the evidence both that the Tribe is liable for the Claimant's injuries and the compensation due therefor. Within sixty (60) days after the conclusion of the evidentiary hearing, the Tribal Gaming Agency shall issue written findings of fact, conclusions of law and a recommended decision to the Business Council. If the Business Council finds that a Claim is proper and substantiated, the Tribe shall allow the amount justly due Claimant. Unless good cause to the contrary is found by the Business Council, the Business Council shall issue its final decision on a Certified Claim within ninety (90) days after receiving the Tribal Gaming Agency's findings of fact, conclusions of law and recommended decision.

F. Tribal Court. If the Tribe establishes a tribal court with jurisdiction over the subject -matter set forth in subsections A-E, of this Section XII, then all such disputes shall be filed in and decided by the tribal court in accordance with the tribal ordinances governing that court and the court rules and procedures duly adopted by the court.

G. Appeals. Either the Claimant or the Tribe may appeal a final decision as to liability or the amount of damages awarded, based upon the evidentiary record presented to the decision-making body. An appeal shall be initiated by the filing of a Notice of Appeal with the Tribal Gaming Agency or the Business Council, whichever body rendered the final decision, within thirty (30) days after mailing of the final decision to the Claimant. Appeals shall be to an arbitration panel consisting of three arbitrators selected under the auspices of the American Arbitration Association ("AAA"). The arbitration panel shall process the appeal in accordance with the Commercial Arbitration Rules of the AAA, and shall decide the appeal according to the same standard of appellate review that would apply to the review of an analogous decision of a federal district court by a federal court of appeals. Each party shall bear its own costs, and the fees and costs of the arbitrator shall be shared equally by the parties. In the event that

subsection F applies, appeals of decisions by the tribal court shall be governed by the ordinances, court rules and procedures governing that court.

XIII. PAYMENT OF AWARDS AND ATTORNEY FEES.

A. 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 Tribe or 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.

B. 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 attest under penalty of perjury to his/her compliance with the limitations set forth in this paragraph. By making such attestation, the attorney agrees that if the attestation is false, the Tribe may bring an action against the attorney in either state or federal court to recover the amount of any fees actually charged to the Claimant.

C. The Tribe, in its sole discretion, may award a successful Claimant attorneys' fees and costs, subject to the limits of XIII.B above, based on the equities and circumstances of the Claim.

D. The Tribe shall not be liable for interest prior to the rendition of an Award.

XIV. EFFECTIVE DATE

This Ordinance is effective on March 6, 2002.

CERTIFICATION

The foregoing Ordinance was adopted at a regular meeting of the Business Council, with a quorum present, held on March 6, 2002, by the following vote:

AYES: 5
NOES: 0
ABSTAIN: 0
ABSENT: 0

Claudia Brundin, Chairperson

ATTESTED:

Secretary to the Business Council