

Animal Control

CHAPTER 30. SAN MANUEL ANIMAL CONTROL ORDINANCE¹

Article I. Introduction & Authority

SMTC 30.1 Title

This Ordinance shall be known as the San Manuel Band of Mission Indians Animal Control Ordinance.

SMTC 30.2 Authority

Article VI of the Articles of Association of the San Manuel Band of Mission Indians empowers the General Council to enact laws governing the conduct of individuals and defining offenses against the Tribe and to maintain order and to protect the safety and welfare of all persons within its jurisdiction.

SMTC 30.3 Declaration of Policy

There are an increasing number of residents within the limits of San Manuel trust lands. There are also an increasing number of these residents being affected by dogs and other Animals. Residents, employees and guests within San Manuel lands should be free from attack, harassment, or disease from dogs and other Animals. In addition, such Animals should be free from abuse, neglect and exploitation. Accordingly, the General Council finds that it is necessary to establish and implement a program for, 1) the licensing and regulation of Animals and the facilities that house them, 2) for the legal protection of such Animals, and 3) the protection of the health, safety, welfare, and property rights of Animal owners and non-owners within San Manuel trust lands; all of which, would be best served by adoption of the San Manuel Animal Control Ordinance

SMTC 30.4 Definitions

When not inconsistent with the context, words in the present tense include the future, words in the singular number include the plural number, words in the plural include words in the singular, and words in the masculine gender include the feminine gender. If a term is not defined in this section, it shall be given its ordinary meaning, unless otherwise defined in this Ordinance.

30.4.1 “**Animal**” means any nonhuman vertebrate species, domestic or non-domestic.

30.4.2 “**Animal Control Officer**” shall mean a qualified DPS Officer or other person or organization so designated by the Business Committee to perform the enforcement functions of this chapter.

¹ Adopted by the General Council on June 9, 2009. Amended by the General Council on August 9, 2016.

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30.4.3 **“At Large”** means present on the Reservation within another person’s property or at any public place without permission from the property owner, tribal government, or occupier.

30.4.4 **“Business Committee”** means the governmental body created in Article III of the Articles of Association of the San Manuel Band of Mission Indians, which is duly authorized to carry out the programs, functions, services and activities as set forth in tribal law.

30.4.5 **“Confinement”** means indoors or an enclosure, which prevents the Animal’s escape or contact with other Animals or persons.

30.4.6 **“Cruelty”** means physical injury inflicted by other than accidental means through the action or inaction of one or more persons that causes or creates a substantial risk of death, disability, disfigurement or impairment of bodily functions or acts that are generally accepted by the Tribal community to be cruel or inhumane.

30.4.7 **“Dangerous Animal”** means an Animal that bites or attacks, or threatens to bite or attack, a person or other Animal.

30.4.8 **“Director”** means the Director of the Department of Public Safety.

30.4.9 **“Department of Public Safety”** or **“DPS”** means the San Manuel Band of Mission Indians Department of Public Safety.

30.4.10 **“Euthanasia”** means the humane destruction of an Animal by a method that produces instantaneous unconsciousness and immediate death or painless loss of consciousness and death during such loss of consciousness.

30.4.11 **“General Council”** means the governing body established by Article III of the Articles of Association of the San Manuel Band of Mission Indians.

30.4.12 **“Impoundment”** or **“Impound”** means the act of taking or receiving into custody by an Animal Control Officer of any dog or other Animal for the purpose of Confinement in accordance with the provisions of this ordinance.

30.4.13 **“Owner”** means any person, firm, corporation, organization, or department who has right of property in any Animal, who has such Animal in his care or custody, or who knowingly permits an Animal to remain on or about any Premises the Owner occupies or has a right to occupy.

30.4.14 **“Premises”** means a building and the area of land surrounding the building, which forms an actual or constructive enclosure to which the Owner of the Animal at issue enjoys a legal or equitable right. Automobiles, trucks, or farm wagons owned or under the control of the Owner or keeper of the Animal at issue are also “Premises.”

30.4.15 **“Proper Enclosure”** means an enclosure that is a securely Confined and locked pen, kennel, or structure upon the Premises of the Owner of such dog. Confinement shall be accomplished by means of a substantial fence or similar enclosure, set back at least ten (10) feet from property lines, sidewalks, and streets, and of sufficient strength and height to prevent

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the Animal from escaping, which shall be locked and secured to prevent entry of young children and other Animals. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one (1) foot. A Proper Enclosure shall be structurally sound and maintained in good repair, and shall have a top, if necessary, to prevent an Animal from escaping and shall also provide protection from the elements for the Animal.

30.4.16 **“Stray Dog”** means a dog running at-large with or without Owner’s identification upon it.

30.4.17 **“Tribe”** and **“Tribal”** means the San Manuel Band of Mission Indians, a federally recognized Indian tribe.

30.4.18 **“Tribal Lands”** shall mean any land, which is owned (either directly or beneficially), leased, occupied or otherwise controlled by the Tribe.

Article II Administration and Enforcement

SMTC 30.5 Delegation of Authority

The Department of Public Safety, by and through its officers is authorized to enforce this Ordinance and applicable state and federal law relative to the control and quarantine of Animal as necessary to carry out its responsibilities under this Ordinance. In furtherance of its duties set forth above, the DPS may:

(a) With the prior approval of the Business Committee, delegate all or part of its responsibilities to competent agencies and officers of federal, state, or local governments or to private persons over the age of 18 and qualified organizations; or

(b) With the prior approval of the Business Committee, negotiate contracts or agreements with said agencies, officers, persons, and organizations, or their facilities, whether within or outside the Tribe’s reservation. Such contracts or agreements are subject to the same contract review and execution process set forth in current Tribal law and policy

SMTC 30.6 Regulatory and Enforcement Authority

The DPS is hereby vested with authority and responsibility to administer this Ordinance. DPS is also vested with enforcement authority for all violations arising under this Ordinance. Such administrative and enforcement authority shall include, but is not limited to, the authority to:

(a) negotiate contracts with, operate, or cause to be operated, Animal shelters and/or dog pounds; or

(b) negotiate contracts with, select, train, hire, or retain Animal Control Officers to enforce the provisions of this Ordinance; or

(c) investigate complaints of Neglected, Stray or Dangerous Animals within Tribal Lands;
or

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(d) issue citations for and prosecute, or assist with the prosecution of, violations of this Ordinance; or

(e) subject to the limits imposed by this Ordinance, whether explicit or implied, take, Confine or Impound Animals in accordance with this Ordinance; or

(f) Euthanize Animals, upon order of the San Manuel Tribal Court and in accordance with established regulations on the matter.

SMTC 30.7 Immunity From Liability

The Tribe, General Council, Business Committee, its departments, agents, officers and duly authorized DPS personnel or its delegees shall be immune from liability for acts committed on Tribal Lands pursuant to the authority contained in this Ordinance.

SMTC 30.8 Regulations

For the implementation of this article, the Director shall adopt necessary or appropriate regulations concerning:

(a) The registration, identification, including photographic, and licensing of all dogs and other Animals included in this Chapter;

(b) The establishment of a spay and neuter program which provides:

(1) New Owner's payment of the cost of spay/neuter surgery to the shelter or the veterinarian before transfer of possession of the Animal occurs; and

(2) Appropriate arrangements for the accomplishment of the surgery; and

(c) A fee structure for licensing, impoundments, and required vaccinations;

(d) Notice to the prospective Owner of the requirements of this Article and of the Director's regulations;

(e) Canine anti-rabies and other mandated vaccinations by applicable law;

(f) Capture, release, and impound of acquired Animals under this Chapter; and

(g) Any other applicable subject of this Chapter.

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Article III Animal Control

SMTC 30.9 Identification and Registration

Any Animal located within the boundaries of the San Manuel Indian Reservation shall be registered and shall wear a licensed identification tag issued by the Department of Public Safety, or receive a microchip implant containing identification information. The Director shall also cause to create and maintain photographic documentation of each Animal registered for purposes of this Chapter.

SMTC 30.10 Public Safety Officer

Public Safety Officers are authorized to promptly impound all Stray Animals, when necessary, that may be found running at large, or unlicensed as required by this Chapter, or being kept or harbored any place within Tribal Lands contrary to the provisions of this Chapter.

SMTC 30.11 Identification Tags

When not confined to the Owner's property, dogs and cats that do not have a microchip implant containing identification information shall wear a substantial collar of leather, or other durable material, to which shall be securely attached the licensed identification tag issued by the Tribe or other licensing jurisdiction.

SMTC 30.12 Vaccinations Required

Animals shall have updated vaccinations as required by Tribal regulations. The Owner shall provide DPS, upon its request, proof of current vaccination.

SMTC 30.13 Appropriate Care Required

It shall be unlawful for an Owner to neglect an Animal by failing to provide food, water, shelter, medical or hygienic care, exercise, or supervision needed for its health, safety and welfare.

SMTC 30.14 Owner Liability

An Owner shall be liable for damage to persons or property caused by the Owner's Animal.

SMTC 30.15 Sanitation

Owners allowing his or her dog or other Animal to defecate upon public or private property without the prior permission of the Owner of such property shall immediately remove all feces by a sanitary method. Such Owner shall possess a container of sufficient size to collect and remove all feces, and shall exhibit the container if requested by any DPS Officer. The collected feces shall be disposed of only upon the property of the Animal Owner or in a communal drop site provided by the Tribe for such purpose.

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SMTC 30.16 Nuisance to the Community Prohibited

It shall be unlawful for any Owner of an Animal to commit the following acts or omissions:

- (a) Failure to prevent the Animal's frequent and sustained barking, howling, braying, crowing or making other sounds common to its species which unreasonably annoy, disturb, or endanger the health, welfare, or repose of neighbor; or
- (b) Failure to maintain in a clean and sanitary condition, devoid of rodents and vermin, and free from objectionable odors, all structures, pens, coops or yards wherein any Animals are kept; or
- (c) Failure to stop an Animal that frequently or habitually snarls, growls at, snaps at, jumps upon, or threatens persons lawfully upon the public sidewalks, streets, alleys, or other public places within the San Manuel Indian Reservation; or
- (d) Failure to keep such Animals Confined on the Owner's Premises; or
- (e) Failure to stop his or her Animal that chases, bites, or injures any livestock or other Domestic Animal or game Animal lawfully on the San Manuel Indian Reservation; or
- (f) Failure to prevent an Animal from damaging other public or privately owned properties, including getting into other people's garbage or scattering garbage.

SMTC 30.17 Mandatory Leashing

All dogs shall be physically restrained by means of a leash not more than 10 feet in length when not on the property of the Owner. A dog may be unleashed on the property of its Owner only if properly Confined or supervised by a person who is able to maintain control of the dog. It shall be unlawful for any Owner to fail to maintain the dog on a leash when off the Premises of its Owner as required by this Ordinance.

SMTC 30.18 Impoundment

Animals may be impounded in the following situations:

- (a) When the Animal is unleashed and off the Premises of its Owner; or
- (b) When the Animal has been subjected to Cruelty or Neglect;
- (c) When DPS Officers have knowledge that an Animal is not being quarantined as required by sections 30.23-24 of this Ordinance, an officer shall impound the Animal for the prescribed quarantine period; or
- (d) Failure of Owner to comply with requirements of this Chapter or court order concerning an Animal.

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SMTC 30.19 Seizure and Impoundment Procedure

DPS Officers shall use best methods available to seize such Animal and deliver such Animal to an Animal control facility as designated by the Director. If DPS Officers are unable to safely seize any Dangerous Animals found running at large, such Animal may be euthanized.

Following impoundment, the Department shall notify the Owner of the Animal of its impoundment; if the Owner is unknown, reasonable efforts to ascertain and notify the Owner of the impoundment shall be made.

SMTC 30.20 Redemption of Animals

(a) Animals, other than livestock and quarantined Animals, that have been impounded by DPS may be redeemed by the Owner upon proof of ownership or responsibility and payment of applicable costs to impound and board the Animal.

(b) Livestock may be redeemed by the Owner upon proof of ownership or responsibility and payment of the costs to impound, board, and, if impounding requires special transportation, to transport the Animal.

(c) If an Animal has been impounded and quarantined by DPS, the Owner of the Animal may redeem it after the quarantine period, if the Animal shows no signs of rabies or other contagious disease for which quarantine is required, upon payment of the cost to quarantine the Animal.

SMTC 30.21 Abandonment

It shall be unlawful for any person to abandon any Animal within the boundaries of the San Manuel Indian Reservation. Any Owner who fails to regain custody of an Animal that has been impounded pursuant to the provisions of this Ordinance in the time provided shall have abandoned all legal rights and interests in the Animal.

SMTC 30.22 Disposition of Animals not Redeemed

(a) When an Animal other than livestock is not redeemed sooner than fourteen (14) days following impoundment, the Director or his authorized agent may give or sell the Animal to a Suitable Person, or Euthanize if unable to locate a Suitable Person within a 30-day period and with the prior written consent of the Business Committee. Under no circumstances shall an impounded Animal be given or sold for medical, scientific, product testing or other experimentation.

(b) When livestock is not redeemed sooner than fourteen (14) days following impoundment, the Director or his/her authorized agent may take reasonable and appropriate steps to sell the Animal at public auction. The proceeds shall be deposited into an account to be used for the administration and enforcement of this Ordinance.

(c) Sick or injured Animals may be Euthanized prior to the expiration of the redemption period if, in the informed opinion of the Director, such action is necessary for the protection of the public health or to prevent unnecessary suffering. The Director shall consult with qualified

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public health, or veterinary personnel and receive the written authorization of the Business Committee prior to authorizing such action. When reasonably possible, the Owner of the Animal shall be notified and provided with an expedited opportunity to appeal the Director's decision prior to any such disposition.

SMTC 30.23 Confinement and/or Quarantine of Animals

Pursuant to the authority of this Chapter, the Director may require Owners to quarantine or Confine their Animals within their Premises. It shall be unlawful for any Owner of an Animal to fail to Confine or Quarantine an Animal as required by this chapter.

SMTC 30.24 Quarantine of Biting Animals

(a) Whenever any Animal bites a person, the Owner of such Animal shall immediately notify the Department of Public Safety within the first twenty-four (24) hours of the bite and make themselves and the Animal readily available to DPS Officers. The officer may order the Animal Confined by the Owner or have it impounded, upon the advice of a qualified medical officer, for a period of up to seven (7) days.

(b) The Animal shall be examined immediately after it has bitten anyone and again at the end of such seven-day period. On opinion by a duly licensed veterinarian that the Animal is free of rabies or other infectious diseases, the Animal shall be released from quarantine or from the pound as the case may be.

(c) If the Animal dies in Confinement or quarantine, it shall be sent to the California State Department of Health for examination and determination of rabies. The owner or keeper of a quarantined Animal shall not sell, give away or permit the Animal to be removed from the Premises of the Owner or keeper without written permission of the Director.

SMTC 30.25 Diseased Animals

It shall be unlawful for person to give away or sell an Animal that the person knows, or reasonably should know is suffering from illness or disease which may threaten the health of the Animal or the health and safety persons within Tribal Lands.

SMTC 30.26 Dangerous Animals

It shall be unlawful to own or keep a Dangerous Animal within Tribal Lands unless the Animal is securely Confined on the Premises of its Owner or keeper or muzzled, leashed, and in the custody and control of a person eighteen years of age or older who is physically able to restrain and control the Animal.

SMTC 30.27 Marauding Animals

Public Safety Officers may destroy such Animal or Animals if found killing any livestock, Domestic Animal, and/or game Animal.

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SMTC 30.28 Directing Dog or Dangerous Animal with Malicious Intent

It shall be unlawful for any person to direct, cause, encourage, allow, or otherwise aid or assist any dog or other Animal to threaten, charge at, intimidate, bite, harass, menace, or attack any person or Animal within Tribal Lands.

SMTC 30.29 Cruelty to Animals

It shall be unlawful for any person to purposely or knowingly:

- (a) Overwork, torture, torment, mutilate, beat or kill an Animal;
 - (b) Fail to provide necessary food, drink, air, space, shelter, or care for an Animal in one's custody;
 - (c) Abandon an Animal in one's custody,
 - (d) Transport or Confine an Animal in a cruel manner;
 - (e) Cause death, injure, or administer poison to an Animal without legal privilege to do so;
- or
- (f) Cause or allow one Animal to fight with another.

SMTC 30.30 Right to Intervene

Public Safety Officers shall have the power to intervene to prevent the perpetration of any above act of Cruelty upon any Animal and may seize the Animal for its safety.

SMTC 30.31 Use of Animal in Illegal Activity

It shall be unlawful for any person to keep and/or control any Animal for the purpose, whether in whole or in part, of conducting any illegal activity or committing any crime within Tribal Lands.

SMTC 30.32 Animals Prohibited

It shall be unlawful for any person to possess or maintain within Tribal Lands all Animals, including snakes, and reptiles, whose bite or venom is poisonous or deadly to humans; all classes of wild Animals; and any Animal which the maintenance or possession of is prohibited by state or federal law.

SMTC 30.33 Removal of Prohibited Animals

(a) Upon a sworn complaint by a DPS Officer that an Animal is a Dangerous Animal or one of the species of Animals prohibited by this chapter, which is illegally possessed or maintained, the DPS Officer shall issue a summons to the Owner ordering him to appear in Tribal Court to show cause why the Animal should not be removed from Tribal Lands or destroyed.

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(b) Upon the filing of a sworn complaint as provided herein, the Tribal Court may order the Owner to immediately turn the Animal over to DPS Officers after such time the Animal can be delivered to an incorporated humane society, a licensed veterinarian, or a boarding kennel, at the Owner's option, to be retained by them until a hearing is held and a decision made for the disposition of the Animal.

(c) Boarding and retention of the Animal shall be at the Owner's expense. After a hearing, the Tribal Court shall issue its findings and opinion as to whether the Animal is subject to destruction or removal under this Chapter. The Tribal Court may order the destruction of the Animal at the Owner's expense, or, in the alternative, order the Animal removed from the Tribal Lands under terms and conditions that ensure such removal. If the Tribal Court does not order the destruction or removal, the Animal shall be immediately returned to the Owner. The Owner shall be responsible for the costs of boarding the Animal.

(d) Illegally possessed and/or maintained Animals that reasonably appear to have become a Dangerous Animal, are subject to immediate seizure or pick-up under this Chapter. The Impounded Animal shall be held at a facility designated by the Department of Public Safety, at the Owner's expense.

SMTC 30.34 Disposition When Sick or Dead

(a) It shall be unlawful for any person to deposit, place or throw away any dead or fatally sick or injured Animal, or part thereof, in any public or private garbage containers, in any public or private place, or into any reservoir, stream, lake, pond, sewer, well or other body of water.

(b) The Owner of any dead Animal shall, within twenty-four (24) hours of the death of such Animal, notify the Department of Public Works or other agency designated by regulation of such death and secure the removal of the carcass, unless the Owner has made private arrangements for the burial or cremation of the Animal in accordance with applicable health and safety regulations.

Article IV. Enforcement Procedures

SMTC 30.35 Enforcement

Any DPS Officer is authorized to issue a notice of violation to the Owner when a violation of this Ordinance occurs in the DPS Officer's presence; or where the Officer has probable cause to believe that a violation has occurred. Such probable cause shall include complaints or statements made by third parties with direct knowledge of a violation.

SMTC 30.36 Notice of Violation

The Notice of Violation shall:

(a) Specify the nature, location, and the date and time of the violation (or the date and time when the violation was discovered), and shall cite the section(s) of this Ordinance that were violated;

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(b) Specify, if possible, the date for hearing before the Tribal Court, which shall be a reasonable time after service of the notice as set forth in regulation;

(c) Specify the amount of the fine which may be paid by the violator to the Tribe to avoid a hearing; and

(d) Notify the violator that if s/he does not appear before the Tribal Court on the date set for hearing, the Tribal Court may declare the violator to be in default and award any appropriate relief or take other action as provided by this Chapter.

SMTC 30.37 Service of Notice

A certificate of service filed by the Department of Public Safety shall constitute proof of service of the notice of violation. The notice of violation shall be served upon the defendant in one of the following:

(a) By delivering a copy personally to the defendant or the defendant's authorized representative, or to any member of the defendant's family residing with the defendant who is eighteen (18) years of age or older; or

(b) By delivering a copy to the defendant's place of business and leaving it with a person authorized to accept service.

(c) If, after reasonable effort is made, the defendant cannot be personally served, service may be made by sending a copy of the notice to the defendant's last known address by certified mail, return receipt requested, and sending an additional copy by regular mail. The certificate must describe the efforts that were made to personally serve the defendant.

SMTC 30.38 No Right to Jury Trial

There is no right to a jury trial in proceedings held pursuant to this Ordinance. The Tribal Court shall hear and decide such proceedings.

SMTC 30.39 Imposition of Civil Penalties

(a) If the Tribal Court finds that this Ordinance was violated, it may require the violator to pay a civil penalty in an amount not to exceed the maximum penalty allowed for the infraction. The Tribal Court may suspend any fine or a portion thereof on the condition that the Owner complies with a valid order. The Tribal Court may also reduce any fine imposed if the Animal's Owner proves to the Tribal Court that the violation has been corrected (for example, that the dog's vaccinations have been brought up to date).

(b) If the Tribal Court finds that this Ordinance was violated and finds that it is likely that the Owner will not provide proper care and supervision for the Animal so as to prevent further violations of this Ordinance, DPS Officers may be ordered to remove the Animal from the Owner and dispose of it in accordance with section 30.34 of this Ordinance.

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SMTC 30.40 Civil Penalties, Damages, Compensation, and Costs Schedule

Person found guilty of violating a provision of this Chapter may be subject to the following:

- (a) Civil penalties and/or exclusion from the territorial jurisdiction of the Tribe.
- (b) Costs incurred for disposing of the Animal or retention and boarding of the Animal.
- (c) Hearing fees/costs as determined by the Tribal Court.

(d) In addition to the civil penalties imposed under this Ordinance, the Tribal Court may order the Owner of an Animal to pay any actual damages for injury to the person, property or resources of any person.

(e) In addition to the foregoing penalties, the Owner and other responsible parties may be required to perform community service and complete educational courses.

SMTC 30.41 Forfeiture of Property Against Owner or Keeper

An Owner may also be subject to forfeiture of any articles or Animals seized in accordance with this Chapter.

SMTC 30.42 Disposition of Funds

All fees and penalties shall be paid directly to the Department of Public Safety and shall be placed into an account to be used for the administration and enforcement of this ordinance.

SMTC 30.43 Appeals

Any defendant may appeal any final order of the Tribal Court pursuant to the appellate process implemented by the Tribal Court.

SMTC 30.44 Private Causes of Action

Nothing in this Ordinance shall prevent a person from bringing a private cause of action in Tribal Court for damages to his or her person or property caused by an Animal.

SMTC 30.45 Liability of Owners

Owners shall be liable in damages for any injury to persons or property committed by any Animal in their care or custody. It shall not be necessary in any action brought to allege or prove that such dog was of a dangerous or mischievous disposition or that the Owner or keeper thereof knew that it was dangerous or mischievous.

It shall be a defense to liability under this section if the injured party provoked the Animal, was unlawfully in or on another's property, including but not limited to the Owner's property, or was committing an unlawful act which contributed to the injury; provided, however, that this defense is not available if the injured person is a child ten (10) years of age or younger.

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SMTC 30.46 Liberal Construction

This Ordinance shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

SMTC 30.47 Severability

If any provision of this ordinance, or its application to any person, legal entity or circumstance, is held invalid, the remainder of the Ordinance, or the application of the provision to other persons, legal entities, or circumstance, shall not be affected.

SMTC 30.48 Prior Laws Repealed

This ordinance supersedes and replaces any conflicting provisions of any and all prior animal control laws, codes, ordinances, or regulations of the San Manuel Band of Mission Indians.

SMTC 30.49 Sovereign Immunity

Nothing herein shall be deemed to constitute a waiver of the Tribe's sovereign immunity from unconsented suit, which is hereby expressly reserved.

SMTC 30.50 Effective Date

Adopted by the San Manuel General Council June 9, 2009. Amended by the San Manuel General Council on August __, 2016.