

Food and Beverage Safety Act

CHAPTER 18. SAN MANUEL FOOD AND BEVERAGE SAFETY ACT¹

SMTC 18.1 Title

This Chapter shall be known and cited as the San Manuel Food and Beverage Safety Act (hereinafter the "Act").

SMTC 18.2 Statement of Purpose

This Act is adopted by the San Manuel Band of Mission Indians, a federally recognized Indian tribe ("Tribe"), to regulate and enforce stringent safety standards for food and beverage handling in all Food Establishments on Tribal Trust Land.

SMTC 18.3 Definitions

- a. **"Compact"** means the Class III Tribal-State Gaming Compact between the Tribe and the State of California executed on or about August 15, 2016, with an effective date of April 10, 2017, which supersedes the prior Tribal-State Gaming Compact executed September 10, 1999 as amended on August 28, 2006, further amended by letter of agreement dated September 25, 2007.
- b. **"Department of Risk Management"** means the San Manuel Department of Risk Management or any successor agency or department thereof.
- c. **"Employee"** means a person employed by the Tribe or the San Manuel Entertainment Authority in a Food Establishment on Tribal Trust Land.
- d. **"Food & Beverage Manager"** means the Employee responsible for overseeing food and beverage operations in a Food Establishment.
- e. **"Food Establishment"** means all of the following:
 1. Any room, building, or place, or portion thereof, maintained, used, or operated for the purpose of storing, preparing, serving, manufacturing, packaging, transporting, salvaging, or otherwise handling food at the retail level on Tribal Trust Land.
 2. Any vehicle, vending machine, temporary food facility, stationary food preparation unit, or mobile food preparation unit handling food at the retail level and located on Tribal Trust Land.
 3. Any place or facility on Tribal Trust Land used in conjunction with the operations described above in subsections (1) or (2), including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

¹ Adopted by the General Council on November 25, 2001. Amended by the General Council on February 12, 2008, and November 14, 2017, with technical amendments approved by the Business Committee on January 11, 2018.

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4. Provided, the term “Food Establishment” shall not include any place or facility on Tribal Trust Land operated by a Tribal Citizen or Tribal Employee for social, recreational or other not for profit activities.
- f. **“Gaming Facility”** means a facility on Tribal Trust Land that meets the definition of “Gaming Facility” as set forth in the Compact.
- g. **“General Council”** means the governing body of the Tribe.
- h. **“Major Violation”** means a violation of the Tribal Food and Beverage Regulations that creates or has the potential to create an imminent health hazard. An “imminent health hazard” means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that can cause food infection, food intoxication, disease transmission, vermin infestation, or hazardous condition that requires immediate correction or cessation of operation to prevent injury, illness, or death.
- i. **“Minor Violation”** means a violation of the Tribal Food and Beverage Regulations that does not rise to the level of a Major Violation but warrants correction.
- j. **“State”** means the State of California.
- k. **“Tribal Food & Beverage Regulations”** means the regulations developed, adopted, and, amended, by the San Manuel Gaming Commission pursuant to the requirements of this Act.
- l. **“Tribal Trust Land”** means all land held in trust by the United States of America for the benefit of the San Manuel Band of Mission Indians.
- m. **“Tribe”** means the San Manuel Band of Mission Indians.

SMTC 18.4 Tribal Authority

18.4.1 Regulatory and Enforcement Authority. The San Manuel Gaming Commission shall have authority to regulate all food and beverage handling operations and enforce the Tribal Food & Beverage Regulations in all Food Establishments on Tribal Trust Land.

18.4.2 Inspection Authority. The Department of Risk Management shall have authority to inspect all Food Establishments pursuant to the standards set forth in this Act and the Tribal Food & Beverage Regulations.

18.4.3 Outside Inspection of Food Establishments in a Gaming Facility. The Gaming Commission shall allow, during normal hours of operation, inspection of Food Establishments in a Gaming Facility by an agency of the United States government pursuant to the applicable requirements of the Compact.

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SMTC 18.5 Adoption of California Retail Food Code Standards

18.5.1 Tribal Food & Beverage Regulations. The Tribe has determined that the California Retail Food Code (the “Code”) establishes a high level of stringent food and beverage handling safety standards and that those standards are desirable for adoption by the Tribe. As an exercise of its inherent sovereign authority to regulate activity on Tribal Trust Land, the Tribe hereby authorizes the San Manuel Gaming Commission, in consultation with the Tribe’s Legal Department and Department of Risk Management, to convert the food and beverage handling requirements of the 2017 California Retail Food Code into Tribal Food & Beverage Regulations applicable to all Food Establishments on Tribal Trust Land. Any and all references to any state, jurisdiction, governmental unit, or governmental department in the California Retail Food Code shall be stricken or amended to refer to the Tribe or its respective Tribal department or agency. In no event shall the Tribal Food & Beverage Regulations apply standards any less stringent than the current California Retail Food Code to the operations of Food Establishments. The Gaming Commission shall provide to the Tribe’s Legal Department, the Department of Risk Management, and each Food Establishment the Tribal Food & Beverage Regulations immediately after adoption.

18.5.2 Implementation. Primary responsibility for implementation of the Tribal Food & Beverage Regulations and day to day monitoring and supervision at each Food Establishment pursuant to this Act shall be with the respective Food and Beverage Manager.

18.5.3 Amendments. The San Manuel Gaming Commission shall review and amend the Tribal Food & Beverage Regulations as necessary to ensure the Regulations remain at least as stringent as the most current version of the California Retail Food Code, in consultation with the Tribe’s Legal Department and Department of Risk Management. The Gaming Commission shall provide to the Tribe’s Legal Department, Department of Risk Management, and each Food Establishment any final approved amendments to the Tribe Food & Beverage Regulations upon adoption.

18.5.4 No Outside Jurisdiction. Any reference in this Act or in the Tribal Food & Beverage Regulations to California law or regulations, or the adoption thereof, is not intended, and shall not be deemed, to confer upon the State of California, its agencies, officials, courts, or other instrumentalities, any jurisdictional or adjudicative authority over the Tribe or any of its officials, employees, members, agents, Food Establishments, operations, assets, or any other Tribal properties, facilities, operations, persons, assets, or instrumentalities.

SMTC 18.6 Tribal Food Establishment Inspections

18.6.1 Regular Inspections Required. The Department of Risk Management shall inspect all Food Establishments at least once every three (3) months.

18.6.2 Frequency of Additional Inspections. The Department of Risk Management shall prioritize and conduct more frequent inspections based upon its assessment of 1) a Food Establishment's history of compliance or non-compliance with this Act and the Tribal Food & Beverage Regulations, 2) the Facility's potential as a route of foodborne illness, and 3) other relevant factors.

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18.6.3 Documenting Information and Observations. During an inspection, the Department of Risk Management shall document on a standardized inspection form specific factual observations of conditions that demonstrate compliance and non-compliance with the requirements of this Act and the Tribal Food & Beverage Regulations and other information as necessary for the assessment.

SMTC 18.7 Notice of Non-Compliance. If the Department of Risk Management discovers during an inspection that a Food Establishment has failed to adhere to the Tribal Food & Beverage Regulations, the Department of Risk Management shall issue in writing a Notice of Non-Compliance to the Food & Beverage Manager. The Food & Beverage Manager shall take corrective action to achieve compliance pursuant to the timelines set forth below in Sections 18.8 and 18.9

SMTC 18.8 Timely Correction for Major Violations

18.8.1 Immediate Correction of a Violation. A Food & Beverage Manager shall at the time of the inspection and to the extent practicable correct a Major Violation of the Tribal Food and Beverage Regulations and implement immediate corrective actions to achieve compliance. If a Food & Beverage Manager determines that immediate corrective action is not practicable, he or she shall inform Risk Management in writing of the reasons why such action is not practicable and request an extension of time to comply with the Notice of Non-Compliance.

18.8.2 Extension of Time. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Department of Risk Management may agree to specify a longer time frame, not to exceed ten (10) calendar days after the inspection, for the Food Establishment to correct a Major Violation of the Tribal Food & Beverage Regulations.

SMTC 18.9 Time Frame for Correction of Minor Violations

18.9.1 Inspection Report. The Department of Risk Management shall specify on a Notice of Non-Compliance the time frame for correction of any Minor Violations identified during the inspection.

18.9.2 Correction Required Within 90 Days of Inspection. A Food Establishment shall correct Minor Violations by the date and time specified by the Department of Risk Management in the Notice of Non-Compliance, but no later than ninety (90) calendar days after the inspection. In the event that a Food & Beverage Manager determines that corrective action is not practicable within such timeframe, he or she shall inform Risk Management in writing of the reasons why such action is not practicable and why no health hazard exists or will result from allowing an extended schedule for compliance, and request an extension of time to comply with the Notice of Non-Compliance.

18.9.3 Extension of Time. The Department of Risk Management may approve a compliance schedule that extends beyond the time limits specified in Section 18.9.2 if no health hazard exists or will result from allowing an extended schedule for compliance.

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SMTC 18.10 Verification and Documentation of Correction

18.10.1 Corrective Action Taken During Inspection. After observing at the time of inspection a correction of a Major or Minor Violation, the Department of Risk Management shall document the Violation and information about the corrective action taken on the inspection report.

18.10.2 Corrective Action Taken After Inspection. After receiving notification that the Food Establishment has corrected a Major or Minor Violation, or at the end of the specified period of time, the Department of Risk Management shall verify the correction and document the information on an inspection report.

SMTC 18.11 Notice of Violation

18.11.1 Issuance of Notice of Violation. In the event that a Food & Beverage Manager fails to comply with a Notice of Non-Compliance, the Department of Risk Management shall issue a Notice of Violation. The Notice of Violation shall identify the conditions demonstrating non-compliance with the Tribal Food & Beverage Regulations, the corrective actions set forth in the Notice of Non-Compliance, and the nature of the Food & Beverage manager's refusal to comply with the Notice of Non-Compliance. The Department of Risk Management shall immediately send a copy of the Notice of Violation to the San Manuel Gaming Commission along with a recommendation for enforcement action to compel the Food & Beverage Manager to achieve compliance with the Tribal Food & Beverage Regulations.

18.11.2 Gaming Commission Enforcement. The San Manuel Gaming Commission shall take any lawful action necessary to enforce a Notice of Violation.

18.11.3 Appeal of Notice of Violation. A Food & Beverage Manager may request a hearing before the Gaming Commission to contest a Notice of Violation pursuant to the processes and timelines outline in Gaming Commission appeal procedures.

SMTC 18.12 Amendments

This Act may be revised, amended, or repealed from time to time as the Tribe shall deem appropriate.

SMTC 18.13 Severability

If any section of this Act, or its application to any person or entity or circumstances is held invalid by a court of competent jurisdiction, the remainder of the Act, or the application of the provision to other persons or entities or circumstances, shall not be affected and shall remain in full force and effect.

SMTC 18.14 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.