

## **Gaming Facility Building and Safety**

### **CHAPTER 14. SAN MANUEL GAMING FACILITY BUILDING AND SAFETY ACT<sup>1</sup>**

#### **SMTC 14.1 Title**

This Chapter shall be known and cited as the "San Manuel Gaming Facility Building and Safety Act" (hereinafter the "Gaming Facility Building and Safety Act").

#### **SMTC 14.2 Statement of Purpose**

This Gaming Facility Building and Safety Act is adopted by the San Manuel Band of Mission Indians, a federally recognized Indian tribe ("Tribe"), in order to comply with Section 6.4.2 of the 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 ("Compact"), which supersedes the prior Tribal-State Gaming Compact executed September 10, 1999, as amended effective January 18, 2008. The purpose of this Gaming Facility Building and Safety Act is to provide for the regulation of construction for all new Gaming Facilities and the expansion, improvement, modification, or renovation to any existing Gaming Facilities (collectively called "Construction") on the San Manuel Indian Reservation ("Reservation"), to ensure that all such construction on the Reservation is conducted in a safe manner, to protect persons and property, and pursuant to standards which will ensure superior workmanship on all such structures. This Gaming Facility Building and Safety Act further provides for penalties for the violation of the provisions hereof, and repeals such sections of the tribal codes and such other ordinances and parts thereof, if any, as may be in conflict herewith. This Act shall supersede the San Manuel Building and Safety Act, adopted by the General Council as Ordinance No. 97.01 on September 9, 1997, solely with respect to new and existing Gaming Facilities on the Reservation. All other building construction on the Reservation shall remain under the governance of the San Manuel Building and Safety Act.

#### **SMTC 14.3 Definitions**

a. **"Applicable Codes"** means the California Building Code and the California Public Safety Code applicable to the County, as set forth in titles 19 and 24 of the California Code of Regulations, as those regulations may be amended during the term of this Compact, including but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire, and safety.

b. **"County"** means the County of San Bernardino, California, a political subdivision of the State of California.

c. **"Current Edition"** means the most current versions of the adopted codes and laws at any point in time now and in the future so that this Act amends by operation of law to automatically incorporate future changes made to the adopted codes and laws.

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<sup>1</sup> Adopted by the General Council on June 13, 2000. See also Chapter 10, "San Manuel Building and Safety Act." Amended by the General Council on November 14, 2000, March 13, 2001, October 14, 2003, April 8, 2008, June 10, 2014, and November 8, 2016.

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d. **“Department of Planning and Development”** means the tribal department vested with the responsibility for overall construction activities related to Gaming Facilities and Gaming Operations.

e. **“Gaming Facilities”** means any building in which Class III gaming activities (as such term is defined under Section 2703 of the Indian Gaming Regulatory Act of 1988 P.L. 100-497, 18 U.S.C. § 1166 et seq. and 25 U.S.C. § 2703) (hereinafter, "IGRA") or gaming operations occur, or in which the business records, receipts, or funds of such gaming operation are maintained (excluding offsite facilities primarily dedicated to storage of those records and financial institutions), and all rooms, buildings and areas, including hotels, parking lots, and walkways, a principal purpose of which is to serve the activities of a gaming operation and Facility rather than providing them with an incidental benefit.

f. **"Gaming Operation"** means the business enterprise that offers and operates Class III gaming activities as authorized under the Compact, whether exclusively or otherwise.

g. **“Tribal Building Officer”** means the individual designated by the Tribe as having primary responsibility for overseeing the Tribe's administration, implementation, and enforcement of this Gaming Facility Building and Safety Act, and fulfilling the analogous responsibilities of building officials and code enforcement agencies, as the case may be, as referenced in Applicable Codes.

### **SMTC 14.4 Standards Applicable to Gaming Facilities**

a. When the Tribe engages in the construction of new Gaming Facilities, or expands, improves, modifies, or renovates any existing Gaming Facility, it shall adhere to Applicable Codes provided, however, that the adoption of such standards shall not be construed as the Tribe's consent to state, county or local governmental regulation authority, or any action to enforce such regulations outside the scope set forth in 6.4.2(i) and 6.4.2(k) of the Compact.

b. Any Gaming Facility Construction shall also comply with the federal Americans with Disabilities Act, P.L. 101-336, as amended, 42 U.S.C. § 12101 et seq.

c. The Tribe incorporates as Applicable Codes the Current Edition of the California Code of Regulations (Title 24), the California Public Safety Code (Title 19) and all standards incorporated therein and/or modified thereby including but not limited to the California Administrative Code, as amended, specifically including the most recent Editions of the California Building Code, California Mechanical Code, California Electrical Code, California Energy Code, California Plumbing Code, California Green Standards Code, and the California Fire Code. Nothing in this Gaming Facility Building and Safety Act shall be construed to apply to any construction, expansion, improvement, modification or renovation other than with respect to Gaming Facilities on the Reservation.

### **SMTC 14.5 Standards Applicable to Inspectors**

a. To assure compliance with the Applicable Codes set forth in Section 14.4 of this Act, in all cases where the Applicable Codes would otherwise require a permit, the Tribe shall require inspections and shall, for that purpose, employ for any Gaming Facilities construction qualified

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plan checkers or review firms that either are California licensed architects or engineers with relevant experience or are California licensed architects or engineers on the list, if any, of approved plan checkers or review firms provided by the County, and employ project inspectors that possess comparable qualifications and certifications as project inspectors utilized by the County.

b. The plan checkers, review firms, and project inspectors referred to in this Act shall hereafter be referred to as “Inspector(s).”

c. The Tribe shall require all Inspectors to maintain contemporaneous records of all inspections and report in writing any failure to comply with the Applicable Codes to the Tribe and its Tribal Gaming Agency, and if the failure is not remedied within thirty (30) days after giving notice of the lack of compliance, to give notice to the State Gaming Agency.

### **SMTC 14.6 Construction Design Plans**

a. The Tribe shall require its Department of Planning and Development to maintain for inspection and copying by the State Gaming Agency upon its request the design and construction calculations, and plans and specifications that form the basis for Construction (the “Design and Building Plans”).

b. In the event that material changes to a structural detail of the Design and Building Plans will result from contract change orders or any other material changes in the Design and Building Plans, the Department of Planning and Development shall cause such changes to be reviewed and field verified by the Inspectors for compliance with Applicable Codes.

c. The Tribe shall maintain during Construction all contract change orders for inspection and copying by the State Gaming Agency upon its request.

d. The Tribe shall maintain the Design and Building Plans depicting the as-built Gaming Facility, which shall be available to the State Gaming Agency for inspection and copying upon its request, for the term of the Compact.

### **SMTC 14.7 Inspector’s Certification of Compliance**

Upon final certification by the Inspector(s) that the Gaming Facility meets the Applicable Codes adopted herein, the Tribe or San Manuel Gaming Commission shall forward the Inspector’s certification to the State Gaming Agency within ten (10) days of issuance. If the State Gaming Agency objects to that certification, the Tribe shall make a good faith effort to address the State Gaming Agency’s concerns, but if the State Gaming Agency does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of the Compact.

### **SMTC 14.8 Workers’ Compensation Requirements**

No permit shall be issued under this Gaming Facility Building and Safety Act unless and until the contractor submits documentation to the Department of Planning and Development demonstrating that the contractor and all of its subcontractors meet workers compensation coverage requirements under California law.

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### **SMTC 14.9 Insurance Requirements**

The Department of Planning and Development shall ensure that no Project shall be commenced prior to adequate insurance protecting the Tribe having first been obtained.

### **SMTC 14.10 Additional Safety Standards**

- a. The Tribe shall take all necessary steps to:
  - i. reasonably ensure the ongoing availability of sufficient and qualified fire suppression services to the Gaming Facility, and
  - ii. to reasonably ensure that the Gaming Facility satisfies all substantive safety and construction requirements of titles 19 and 24 of the California Code of Regulations applicable to similar facilities in the County.
- b. Not less than thirty (30) days before the effective date of the Compact or the commencement of gaming activities in any Gaming Facility subject to the Gaming Facility Construction requirements of this Section, and not less than every two years thereafter in both cases, and upon at least ten (10) days' notice to the State Gaming Agency, the Gaming Facility shall be inspected, at the Tribe's expense, by a qualified Tribal inspection official, if any, who is responsible for fire protection on the Tribe's lands, or by an independent expert, for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety.
- c. The State Gaming Agency shall be entitled to designate and have a qualified representative or representatives present during the inspection. During such inspection, the State's representative(s) shall specify to the qualified Tribal inspection official or independent expert, as the case may be, any condition which the representative(s) reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire safety and life safety.
- d. The qualified Tribal inspection official or independent expert shall issue to the Tribe, the Tribal Gaming Agency, and the State Gaming Agency a report on the inspection within fifteen (15) days after its completion, or within thirty (30) days after commencement of the inspection, whichever first occurs, identifying any deficiency in fire safety or life safety at the Gaming Facility or in the ability of the Tribe to meet reasonably expected fire suppression needs of the Gaming Facility. Within thirty (30) days after the issuance of the report, the qualified Tribal inspection official or independent expert shall also require and approve a specific plan for correcting deficiencies, whether in fire safety or life safety at the Gaming Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Gaming Facility, including those identified by the State Gaming Agency's representative(s). A copy of the report shall be delivered to the State Gaming Agency, upon delivery of the report to the Tribe. Immediately upon correction of all deficiencies identified in the report, the qualified Tribal inspection official or independent expert shall certify in writing to the Tribe, Tribal Gaming Agency, and State Gaming Agency that all deficiencies have been corrected.

### **SMTC 14.11 Responsibility Under Other Applicable Law**

Nothing in this Gaming Facility Building and Safety Act shall relieve the Tribe, any tribal

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member, or others from any responsibility or obligation under any other applicable tribal or federal laws or regulations for the regulation or protection of environmental or cultural resources or persons with disabilities.

### **SMTC 14.12 Issuance of Certificates of Occupancy**

a. Notwithstanding the adoption of the Applicable Codes hereunder and anything to the contrary contained therein, any Gaming Facility in which gaming authorized by the Compact is conducted shall be issued a certificate of occupancy ("C.O.O.") by the San Manuel Gaming Commission prior to occupancy, if it was not used for any gaming activity under IGRA prior to the effective date of the Compact, or, if it was so used, within one year thereafter.

b. A Gaming Facility shall be issued a C.O.O. by the San Manuel Gaming Commission based on the final certification specified in Section 14.7. The C.O.O. shall be reviewed for continuing compliance on a biennial basis. Inspections by Inspectors shall be conducted under the direction of the San Manuel Gaming Commission as the basis for issuing any biennial renewals of the C.O.O.

### **SMTC 14.13 Enforcement**

The Department of Planning and Development shall have responsibility for monitoring all planned or ongoing construction on the Reservation to ensure compliance with the Gaming Facility Building and Safety Act, shall investigate any complaint submitted in writing to the Gaming Commission relative to any alleged violation of this Gaming Facility Building and Safety Act, and shall have the authority to cite any violation of this Gaming Facility Building and Safety Act. Any such notice of violation (each, a "Notice of Violation") must cite the specific provision(s) of the applicable law or Gaming Facility Building and Safety Act which has been violated, and copies of such notice shall be distributed to the Tribal Business Committee and the alleged violator.

### **SMTC 14.14 Penalties**

Any condition which is the subject of a Notice of Violation and which is not corrected within five (5) calendar days after the date of the Notice of Violation shall be punishable by an initial fine of \$1,000.00 for each violation cited therein. Any conditions remaining uncorrected ten (10) calendar days after the date of a Notice of Violation shall, in addition, be subject to a daily fine of \$250.00 for each day the violation continues after such tenth (10th) calendar day. The Tribal Building Officer shall notify the Tribal Business Committee in writing of any uncured violations and of any penalties imposed.

Because any failure to remedy within a reasonable period of time any deficiency that poses a serious or significant risk to the health or safety of any person is deemed a violation of the Compact, the State Gaming Agency may seek and obtain a court order to prohibit occupancy of the affected portion of the Gaming Facility until the deficiency is corrected. In the event such an action is initiated by the State Gaming Agency pursuant to the terms of the Compact, the Tribe shall take all necessary measures to enforce the provisions of this Act in any legally appropriate manner, and to recover any damages resulting therefrom.

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### **SMTC 14.15 Appeal Process**

Any person cited with a Notice of Violation shall have the right to file an appeal with the Tribal Court opposing the notice and any related penalties. All such appeals must be submitted in writing within fifteen (15) days after the date of such Notice of Violation. Appellants shall be allowed to present evidence in their defense in a hearing before the Tribal Court. The Tribal Court shall render a final decision with respect to a Notice of Violation within fifteen (15) calendar days of the date of such hearing, either dismissing the Notice of Violation and any related penalties or declaring that such notice shall remain in effect and that related penalties, if any, shall remain payable. The process described in this Section is within the exclusive jurisdiction of the Tribal government and its agencies and officers and is the sole recourse for any person opposing a Notice of Violation or any penalties related thereto.

### **SMTC 14.16 Conflicting Provisions**

The provisions of this Gaming Facility Building and Safety Act shall supersede any other tribal laws, ordinances, and regulations, or any portions thereof, which are in conflict with the provisions of this Gaming Facility Building and Safety Act.

### **SMTC 14.17 Severability**

If any section, subsection, sentence, clause or phrase of this Gaming Facility Building and Safety Act is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Gaming Facility Building and Safety Act. The Tribe hereby declares it would have passed this Gaming Facility Building and Safety Act, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

### **SMTC 14.18 Effective Date**

This Gaming Facility Building and Safety Act and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect on the date of its final adoption by the Tribe's General Council.

### **SMTC 14.19 Sovereign Immunity Preserved**

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