

## **Building and Safety**

### **CHAPTER 11. BUILDING AND SAFETY ACT<sup>1</sup>**

#### **YSMNC 11.1 Title**

This Chapter shall be known and cited as the “Building and Safety Act” (hereinafter the “Act”).

#### **YSMNC 11.2 Statement of Purpose**

This Act is adopted by the Tribal Authorities of the Yuhaaviatam of San Manuel Nation (“Nation” or “Tribe”), a federally recognized Indian tribe, pursuant to its authority under the Yuhaaviatam of San Manuel Nation Constitution, for the purpose of establishing the regulation of all Construction on the San Manuel Reservation (“Reservation”), excluding Construction to Gaming Facilities which is governed by the San Manuel Gaming Facility Building and Safety Act, as amended. It is the purpose of this Act to regulate the Construction, demolition, occupancy, equipment, use, height, area and maintenance of buildings, structures, or appurtenances connected or attached to such buildings or structures upon the Reservation to ensure that all Construction regulated by this Act is conducted in a professional and safe manner.

#### **YSMNC 11.3 Definitions**

11.3.1       **“Adoption Matrix”** is as defined in Section 11.4.2 below.

11.3.2       **“Building Regulations”** means the list of all laws, regulations and any Non-Tribal Codes in the form adopted, including all amendments thereto, by the Tribal Authorities or updated in accordance with this Act relating to standards for Construction, demolition, occupancy, equipment, use, height, area and maintenance of buildings, structures, or appurtenances connected or attached to such buildings or structures.

11.3.3       **“Certified Building Official”** means the individual vested with the responsibility for overseeing Tribal enforcement and compliance with all provisions of the Act, sections of the Building Regulations, and permit conditions.

11.3.4       **“Construction”** means the construction, enlargement, alteration, repair, relocation, demolition, or change of the occupancy of a building or structure; the grading, excavation or performance of earthwork construction; or the erection, installation, enlargement, alteration, repair, removal, conversion, or replacement any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this Act, or to cause any such work to be done.

11.3.5       **“Construction Inspector”** means any person hired by the Tribal Building Officer, or their delegate, in a temporary or permanent capacity for the purpose of inspecting Construction on the Reservation for compliance with this Act and the Building Regulations, as

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<sup>1</sup> Adopted by the General Council as Ordinance No. 97.01 on September 9, 1997. Amended by the General Council on November 14, 2000, March 13, 2001, October 14, 2003, October 9, 2007, October 13, 2009, June 10, 2014, and June 9, 2015. Further amended by the Tribal Authorities on October 10, 2023. See also, "Gaming Facility Building and Safety Act."

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applied to residential, commercial, or industrial structures and buildings, including but not limited to requirements that ensure structural, seismic, fire, and life safety.

11.3.6 **“Construction Planner”** means the individual responsible for coordinating the efforts of the estimating staff and accountable for the overall outcome of the estimates and project schedules for all project proposals.

11.3.7 **“Corrected”** means the violation has been cured, or affirmative corrective measures acceptable to the Certified Building Official have been commenced and are being diligently pursued in efforts to fully cure the violation.

11.3.8 **“Current Edition”** means the most current versions of the laws and regulations adopted pursuant to section 11.4 of the Act by the Tribal Authorities.

11.3.9 **“Department of Building and Safety”** means the department established by the Nation to implement, administer, and enforce the provisions of this Act regulating Construction on the Reservation, which department shall not report to any other department or person who works for a department that routinely submits applications or requests for permits or seeks any other approval or review of the Department of Building and Safety or its agents or designees.

11.3.10 **“Governing Council”** means the governing body of the Nation pursuant to Article II of the Yuhaaviatam of San Manuel Nation Constitution.

11.3.11 **“Indian Contractor”** means a contractor who has submitted proof acceptable to the Department of Building and Safety of membership, descendancy or degree of Indian ancestry as indicated on membership rolls or records of a federally recognized Indian tribe and who otherwise qualifies and meets all requirements for the preference to be granted to Qualified Native American-Owned Business under The Nation’s Native American Preference Act, as amended.

11.3.12 **“Nation” or “Tribe”** means the Yuhaaviatam of San Manuel Nation, a federally recognized Indian tribe.

11.3.13 **“Non-Tribal Code”** means any international, federal, state, or local code, law, ordinance, regulation, or rule relating to standards for Construction.

11.3.14 **“Notice of Violation”** means a notice issued by the Certified Building Official citing the provision of the Act, sections of the Building Regulations, or any permit conditions that the Certified Building Official believes the recipient has violated.

11.3.15 **“Plans Examiner”** means an individual hired by the Tribal Building Officer or their delegate in a temporary or permanent capacity for the purpose of performing Construction plan review for structural, seismic, fire and life safety, or building system requirements of the Act and the Building Regulations, as applied to residential, commercial, or industrial buildings on the Reservation.

11.3.16 **“Reservation”** means the San Manuel Reservation.

11.3.17 **“Tribal”** means of or belonging to the Yuhaaviatam of San Manuel Nation.

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11.3.18 **“Tribal Authorities”** means the Governing Council collectively with a General Assembly.

11.3.19 **“Tribal Building Officer”** means the individual designated by the Nation as having primary responsibility for overseeing the Department of Building and Safety, who shall not report to any other department or person who works for a department that routinely submits applications or requests for permits to, or seeks any other approval or review of, the Department of Building and Safety or its agents or designees.

11.3.20 **“Tribal Council”** means the Yuhaaviatam Tribal Council of San Manuel, the representative body duly elected from the Governing Council established under the Yuhaaviatam of San Manuel Nation Constitution.

11.3.21 **“Tribal Disbursement”** means any payment of Tribal funds to a Tribal Citizen, including but not limited to per capita payments.

### **YSMNC 11.4 Adoption and Incorporation of Non-Tribal Codes**

11.4.1 The Tribal Authorities shall have the authority to adopt, amend or reject all or any portion of any Non-Tribal Code. Upon the adoption of any Non-Tribal Code, the Current Edition of the adopted Non-Tribal Code shall automatically become incorporated into the Building Regulations on its effective date; provided, however, that any excluded portions of such code shall not be adopted and any amended portions shall continue in effect in their amended form. All references to any state, jurisdiction, governmental unit, or governmental department shall automatically be amended to refer to the Nation or its respective Tribal department.

11.4.2 The list of all Non-Tribal Codes adopted, amended, or rejected by the Tribal Authorities, including specification of each such Non-Tribal Code’s status (the “Adoption Matrix”), shall be maintained on file with the Department of Building and Safety and shall be open for inspection upon reasonable request by Tribal Citizens and any contractors, architects, and civil engineers hired by a Tribal Citizen or the Nation.

11.4.3 The Tribal Building Officer or their delegate shall present an overview of the then current Building Regulations, including the Adoption Matrix and any proposed changes or updates to the Non-Tribal Codes in the Adoption Matrix, to the Tribal Authorities no less than ninety (90) calendar days prior to the effective date of such Non-Tribal Codes and no less frequently than three (3) year intervals. If updates to the Non-Tribal Codes in the Adoption Matrix exist or if changes to the Building Regulations are recommended, they shall present recommendations as to whether any changes or updates to the Adoption Matrix or other Building Regulations should be adopted, modified or rejected by the Tribal Authorities.

11.4.4 The provisions of this Act and the laws or regulations adopted by the Nation in any Tribal law shall supersede any section of the Building Regulations or any Non-Tribal Codes adopted pursuant to this section of the Act that are in conflict with any Tribal law, ordinance or regulation.

11.4.5 Any reference to a state law or regulation or the adoption thereof is not intended, and shall not be deemed, to confer jurisdiction upon the state referenced.

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### **YSMNC 11.5 Permits**

11.5.1 Any owner or authorized agent who intends to engage in Construction on the Reservation shall first make application to the Department of Building and Safety and obtain any required permits.

11.5.2 No permit shall be issued to an individual hired by a Tribal Citizen or the Nation under this Act unless and until that individual submits evidence of insurance coverage meeting the requirements set forth in the schedule of insurance prepared by the Enterprise Risk Management and Operations Department and approved by the Tribal Building Officer, or submits evidence of an exemption from the requirement to the Department of Building and Safety after consulting with the Enterprise Risk Management and Operations Department.

### **YSMNC 11.6 Fees**

11.6.1 The Tribal Authorities shall be authorized to impose fees to obtain a permit under this Act. A schedule of such fees shall be maintained on file with the Department of Building and Safety and shall be open for inspection by Tribal Citizens and any contractors, architects, and civil engineers hired by a Tribal Citizen or the Nation.

11.6.2 All fees shall be reduced by 15% for any Construction work that is undertaken by an Indian Contractor.

11.6.3 A Tribal Citizen may submit a request in writing to the Tribal Authorities for a waiver of any fees imposed under this Act. The Tribal Authorities shall have the authority to waive any fees required under the Act upon a determination that the imposition of the fee would result in a significant hardship to the Tribal Citizen.

### **YSMNC 11.7 Cultural Resources and Environmental Protection**

Nothing herein is intended to relieve the Nation or an individual Tribal Citizen from any liability, responsibility, or obligation it may have under any Tribal or federal resource protection statutes, regulations, or other applicable law.

### **YSMNC 11.8 Department of Building and Safety**

11.8.1 There is hereby established by the Nation a department to be known as the Department of Building and Safety.

11.8.2 The Department of Building and Safety shall be headed by the Tribal Building Officer, who shall report to the Nation's Chief Executive Officer or their designee.

11.8.3 The Tribal Building Officer shall engage a Certified Building Official, who shall be an at-will employee or consultant of the Nation that reports to the Tribal Building Officer. The position may be full-time, part-time or on a consultant basis as deemed necessary by the Tribal Building Officer.

11.8.4 In order to qualify for the position of Certified Building Official, a prospective candidate must:

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- a. hold a “Certified Building Official” certificate issued by the Council of American Building Officials or an equivalent credential generally recognized in the building industry qualifying the candidate to certify Construction as being in compliance with building and safety codes;
- b. have a minimum of three years verifiable experience as a building official or equivalent experience for a local government, or a minimum of five consecutive years of experience in private industry as a certified construction inspector; and
- c. submit to the Tribal Building Officer on an annual basis proof of compliance with all applicable continuing education requirements of the State of California for their primary job function.

11.8.5 The Certified Building Official shall obtain the services of Construction Planners, Construction Inspectors and Plans Examiners, needed to assist in the performance of the Certified Building Officials’ duties and whose qualifications and credentials have first been submitted and approved by the Tribal Building Officer. All Construction Planners, Construction Inspectors and Plans Examiners must be certified in their primary job function by the International Council of Building Officials and be in compliance with all applicable required continuing education requirements of the State of California for their position.

### **YSMNC 11.9 Enforcement**

11.9.1 The Certified Building Official shall implement all procedures and requirements of the Act and the Building Regulations and shall monitor all planned or ongoing Construction on the Reservation to ensure compliance with all provisions of the Act, sections of the Building Regulations and conditions of any permit.

11.9.2 The Certified Building Official shall have the authority to cite any violation of any provisions of the Act, sections of the Building Regulations or permit conditions by issuing a written Notice of Violation. All Notices of Violation shall cite the particular provisions of the Act, sections of the Building Regulations, or conditions of the permit that have been violated. Copies of all Notices of Violation shall be delivered to the Office of the Tribal Secretary within three (3) business days of serving the Notice of Violation on the individual.

11.9.3 The Certified Building Official shall investigate any complaint submitted in writing to the Department of Building and Safety relative to any alleged violation of provisions of the Act, sections of the Building Regulations or permit conditions, and shall submit a written report to the Tribal Building Officer as to their findings. The Tribal Building Officer shall review all findings of investigations by the Certified Building Official and shall report to the Tribal Council any investigations substantiating a violation that has not been Corrected within five (5) business days of issuing a Notice of Violation.

### **YSMNC 11.10 Penalties**

11.10.1 Tribal Citizens shall be held responsible for any Notice of Violation which is issued relative to a condition created by the Tribal Citizen or a contractor working on a Tribal Citizen’s behalf.

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11.10.2 Any condition which is the subject of a Notice of Violation which is not Corrected within five (5) business days of receipt of the Notice of Violation shall be punishable by an initial fine of \$1,000.00 for each violation. Any conditions that have not been Corrected within ten (10) business days after receipt of the Notice of Violation shall be punishable by an additional fine of \$250.00 for each day the violation continues until the violation is Corrected.

11.10.3 The Tribal Building Officer shall notify the Tribal Council in writing of violations that have not been Corrected within five (5) business days and any penalties or fines imposed.

11.10.4 All fines shall be payable within thirty (30) business days after the imposition of the fine. All fines issued to a contractor hired by a Tribal Citizen shall be imposed against, and payable to the Nation, by the Tribal Citizen. All fines shall be deposited in the Tribal fund for providing education benefits in accordance with the Nation's Educational Awards and Benefits Act.

11.10.5 All fines imposed against a Tribal Citizen shall constitute a lien against any monies payable by the Nation to the Tribal Citizen. The Tribal Council Treasurer or other person who disburses treasury funds shall be notified within three (3) business days of such lien and if such funds are unpaid when Tribal Disbursements are made, the Treasurer shall direct any fine for violations of this Act be withheld from the Tribal Disbursement due to the Tribal Citizen and shall instead direct such amounts be credited to the Tribal fund for providing education benefits in accordance with the Nation's Educational Awards and Benefits Act.

### **YSMNC 11.11 Appeal Process**

11.11.1 Any Tribal Citizen or non-Tribal Citizen, who has been issued a Notice of Violation shall have as their sole and exclusive remedy, the right to file a notice of appeal with the San Manuel Tribal Court ("Tribal Court").

a. A notice of appeal must be filed in the Tribal Court within twenty (20) business days of the date of receipt of the issuance of a Notice of Violation.

b. All appeals shall be adjudicated in accordance with Tribal law and court rules governing judicial proceedings.

c. Should the Tribal Citizen or non-Tribal member successfully appeal the Notice of Violation, any monetary fine associated with the Notice of Violation that has been paid shall be reimbursed to the Tribal Citizen or non-Tribal Citizen within seventy-two (72) hours of the Tribal Court issuing its decision.

### **YSMNC 11.12 Tribal Sovereign Immunity**

Nothing contained within this Act shall be deemed to constitute a waiver or diminution of any type whatsoever of the Nation's sovereign immunity from unconsented suit, which sovereign immunity is hereby expressly reaffirmed.