

# Food and Beverage Safety Act

## CHAPTER 18. FOOD AND BEVERAGE SAFETY ACT<sup>1</sup>

### YSMNC 18.1 Title

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

### YSMNC 18.2 Statement of Purpose

This Act is adopted by the Yuhaaviatam of San Manuel Nation, a federally recognized Indian tribe ("Nation" or "Tribe"), to regulate and enforce stringent safety standards for food and beverage handling in all Food Establishments on Tribal Trust Land. To ensure the long-term health, economic stability, and cultural preservation of the Tribe, the Tribe finds it essential to act at all stages of the food chain. The authority of the Tribe to regulate and enforce safety standards for food and beverage handling shall be permitted at the stages of procurement, receiving, and consumption, to the greatest extent permitted under federal or other applicable law.

### YSMNC 18.3 Definitions

- 18.3.1 **"Compact"** means the Class III Tribal-State Gaming Compact between the Nation and the State of California executed on or about August 15, 2016, with an effective date of April 10, 2017, as amended August 18, 2017, with an effective date of January 22, 2018, 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.
- 18.3.2 **"Department of Public Health"** means the San Manuel Department of Public Health or any successor agency or department thereof.
- 18.3.3 **"Employee"** means a person employed by the Nation or the San Manuel Entertainment Authority in a Food Establishment on Tribal Trust Land.
- 18.3.4 **"Food & Beverage Manager"** means the Employee responsible for overseeing food and beverage operations in a Food Establishment.
- 18.3.5 **"Food Establishment"** means all of the following:
- (a) 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.
  - (b) 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.

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<sup>1</sup>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. Amended by the Tribal Authorities on April 9, 2024.

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(c) Any place or facility on Tribal Trust Land used in conjunction with the operations described above in subsections (a) or (b), including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(d) Provided, the term “Food Establishment” shall not include any place or facility on Tribal Trust Land operated by a Tribal Citizen for social, recreational, or other not for profit activities. “Food Establishment” shall include any vehicle, vending machine, temporary food facility, stationary food preparation unit, or mobile food preparation hired by the Tribal Government when operated by third parties on Tribal Trust Land.

18.3.6 **“Gaming Facility”** means a facility on Tribal Trust Land that meets the definition of “Gaming Facility” as set forth in the Compact.

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

18.3.8 **“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.

18.3.9 **“Major Violation”** means a violation of the Tribal Food & Beverage Regulations that creates or has the potential to create an Imminent Health Hazard.

(a) A **“Critical Violation”** is sub-category of a Major Violation and means a repeated or uncorrected Major Violation that causes a shutdown of the Food Establishment.

18.3.10 **“Minor Violation”** means a violation of the Tribal Food & Beverage Regulations that does not rise to the level of a Major Violation or poses an imminent health hazard but warrants correction.

18.3.11 **“SMEA Board”** means the Board of Directors for the San Manuel Entertainment Authority.

18.3.12 **“State”** means the State of California.

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

18.3.14 **“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.

18.3.15 **“Tribal Food & Beverage Regulations”** means the regulations developed, adopted, and amended by the San Manuel Gaming Commission pursuant to the requirements of this Act (also referred to herein as the “Regulations”).

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18.3.16 **“Tribal Trust Land”** means all land held in trust by the United States of America for the benefit of the Yuhaaviatam of San Manuel Nation, however previously referenced or denominated.

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

18.3.18 **“Yaamava’ Resort & Casino Safety Department”** or **“YRC Safety”** is the safety support team of the Yaamava’ Resort & Casino, a Gaming Facility on Tribal Trust Land, or its successor department. YRC Safety staff includes a Food & Safety Specialist or equivalent.

### **YSMNC 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 Public Health 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 and Food Establishment 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.

### **YSMNC 18.5 Adoption of California Retail Food Code Standards**

18.5.1 **Tribal Food & Beverage Regulations.** The Nation 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 Nation. As an exercise of its inherent sovereign authority to regulate activity on Tribal Trust Land, the Nation hereby authorizes the San Manuel Gaming Commission, in consultation with the Nation’s Legal Department and Department of Public Health, to draft and adopt food and beverage handling requirements no less stringent than the most recent California Retail Food Code into Tribal Food & Beverage Regulations applicable to all Food Establishments on Tribal Trust Land, as may be further defined by policy or procedure. 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 Nation or respective departments or agencies of the Nation. 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 Nation’s Legal Department, the Department of Public Health, 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

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pursuant to this Act shall be with the respective Food & Beverage Manager and, for Gaming Facilities, YRC Safety.

**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 Public Health. The Gaming Commission shall provide to the Tribe's Legal Department, Department of Public Health, 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 Nation or any of its officials, employees, members, agents, Food Establishments, operations, assets, or any other properties, facilities, operations, persons, assets, or instrumentalities of the Nation.

### **YSMNC 18.6 Tribal Food Establishment Inspections**

**18.6.1 Regular Inspections Required.** The Department of Public Health shall inspect, or cause to be inspected, all Food Establishments at least once every three (3) months.

**18.6.2 Frequency of Additional Inspections.** The Department of Public Health 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.

**18.6.3 Documenting Information and Observations.** During an inspection, the Department of Public Health 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.

### **YSMNC 18.7 Notice of Non-Compliance**

If the Department of Public Health discovers during an inspection that a Food Establishment has failed to adhere to the Tribal Food & Beverage Regulations, the Department of Public Health 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.

### **YSMNC 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, they

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shall inform the Department of Public Health 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 Immediate Notification to Tribal Leadership of Critical Violations.** In the event of a Critical Violation, which is a repeated or uncorrected Major Violation that causes the closure of a Food Establishment, the Department of Public Health shall notify the Tribal Council and, for Critical Violations at Gaming Facilities, the SMEA Board in writing within 24 hours of the identification of a Critical Violation by the Department of Public Health.

**18.8.3 Extension of Time.** Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Department of Public Health 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.

### **YSMNC 18.9 Time Frame for Correction of Minor Violations**

**18.9.1 Inspection Report.** The Department of Public Health 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 Public Health 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, they shall inform Public Health 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 Public Health 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.

### **YSMNC 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 Public Health 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 Public Health shall verify the correction and document the information on an inspection report.

### **YSMNC 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 Public Health shall issue a Notice

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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 Public Health shall immediately send a copy of the Notice of Violation to the Tribal Council, the San Manuel Gaming Commission, and, for violations at Gaming Facilities, the SMEA Board, 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 San Manuel Gaming Commission to contest a Notice of Violation pursuant to the processes and timelines outlined in the San Manuel Gaming Commission appeal procedures.

### **YSMNC 18.12 Amendments**

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

### **YSMNC 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.

### **YSMNC 18.14 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.