

Native American Preference

CHAPTER 31. NATIVE AMERICAN PREFERENCE ACT¹

YSMNC 31.1 Title

This Chapter shall be known and cited as the “Native American Preference Act” (hereinafter “Act”).

YSMNC 31.2 Statement of Purpose

The Yuhaaviatam of San Manuel Nation (“Nation”) is dedicated to protecting the political integrity, economic security, and the health and welfare of the Nation, and to promoting the economic self-sufficiency of Tribal Citizens and all Native Americans. This Act codifies the Yuhaaviatam of San Manuel Nation policy of extending a preference in its Hiring Practices to Qualified Applicants and Employees who are Tribal Citizens and Native Americans and extending a preference in its bidding practices to Tribal Citizen-Owned Businesses and Native American-Owned Businesses (“Native American Preference”).

YSMNC 31.3 Findings

By adopting this Act, the Tribal Authorities, the duly authorized governing body of the Yuhaaviatam of San Manuel Nation, finds the following:

31.3.1 Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) does not apply to federally-recognized Indian tribes such as the Yuhaaviatam of San Manuel Nation.

31.3.2 Except as otherwise provided by this Act, the Nation, its agencies, and its enterprises shall not select or hire for employment, promote, transfer, reassign, lay off, recall, or terminate any individual because of such individual’s race, color, religion, sex, or national origin.

YSMNC 31.4 Definitions

31.4.1 “**Applicant**” means any person who has applied for employment with the Employer.

31.4.2 “**Employee**” means a person, other than an independent contractor, employed by or in the service of the Yuhaaviatam of San Manuel Nation and its Entities. For purposes of this Act, “Employee” shall not include Tribal Citizens (unless employed by the Nation), independent contractors, contractors, and outside consultants.

31.4.3 “**Employer**” means the Yuhaaviatam of San Manuel Nation and its Entities.

31.4.4 “**Entities**” means San Manuel Entertainment Authority; San Manuel Utility Authority; San Manuel Investment Authority; San Manuel Band of Mission Indians of California, a federal corporation; and all successor entities thereof established by Tribal law.

¹ Adopted by the San Manuel General Council on June 9, 2009. Amended by the Tribal Authorities on October 10, 2023.

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31.4.5 **“Hiring Practices”** means activities related to the retention of an Employee or Applicant including, but not limited to, selection, hiring, promotion, transfer, reassignment, lay-off, recall, and termination. “Hiring Practices” does not include the awarding of shifts, breaks, dress code, or other activities unrelated to the retention of an Employee or Applicant.

31.4.6 **“Indian Tribe”** means any tribe, including Alaska Native villages, federally recognized by the United States as eligible for services from the federal government.

31.4.7 **“Nation” or “Tribe”** means the Yuhaaviatam of San Manuel Nation, a federally recognized Indian tribe, and its Entities.

31.4.8 **“Native American”** means any person who is a member of any Indian Tribe

31.4.9 **“Native American-Owned Business”** refers to a business that is at least 51% owned and managed by one or more members of an Indian Tribe, as authenticated by the Native American or Native Americans who claim ownership.

31.4.10 **“Native American Preference”** means extending a preference in the following instances: (a) in the Nation’s Hiring Practices to Qualified Applicants and Employees who are Tribal Citizens and Native Americans; and/or (b) in the Nation’s bidding practices to Tribal Citizen-Owned Businesses and Native American-Owned Businesses.

31.4.11 **“Qualified”** means possessing the minimum threshold requirements.

31.4.12 **“Tribal”** means of or relating to the Yuhaaviatam of San Manuel Nation.

31.4.13 **“Tribal Authorities”** means Governing Council collectively with a General Assembly pursuant to Article II of the Constitution.

31.4.14 **“Tribal Citizen”** means any duly enrolled citizen of the Yuhaaviatam of San Manuel Nation.

31.4.15 **“Tribal Citizen-Owned Business”** refers to a business that is at least 51% owned and managed by one or more Tribal Citizens, as authenticated by the Tribal Citizen(s) who claims ownership.

YSMNC 31.5 Native American Preference in Hiring Practices

Unless otherwise prohibited by applicable law, the Nation shall give preference in all aspects of its Hiring Practices to Qualified Employees and Applicants who are Native American, with the first order of preference to Tribal Citizens.

YSMNC 31.6 Eligibility for Native American Preference

31.6.1 Employees and Applicants shall demonstrate they meet the definition of “Native American” as set forth in this Act by providing all the following:

- (a) Proof of tribal membership, such as identification cards or certificates; and

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(b) Contact information for the membership office of the Indian Tribe in which the Employee or Applicant claims membership.

31.6.2 Employees and Applicants shall meet the minimum qualifications of the job position for which they are applying to be eligible for the preference.

31.6.3 Native American Preference shall only apply in circumstances where a Hiring Practice decision must be made between two or more similarly qualified Employees or Applicants.

YSMNC 31.7 Exemption

Every effort shall be made to apply Native American Preference to key positions that require an advanced degree, license, or other specialized skill, but Native American Preference shall not be required where candidate qualifications are so disparate as to warrant the hiring of a non-Native American or a Native American who is not a Tribal Citizen.

YSMNC 31.8 Covered Positions

Except as set forth in this Act, Native American Preference shall apply to all positions and job classifications, including entry level, management, executive positions, administrative, supervisory, and professional classifications.

YSMNC 31.9 Native American Preference by Other Employers

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YSMNC 31.10 Native American Preference in Contracting

31.10.1 Bid awards for the procurement of services, materials, supplies, and equipment required for work to be performed for the Nation shall be awarded to Qualified Native American-Owned Businesses that submit responsive bids for any work advertised as part of the standard procurement process; provided that such bids are of the same or substantially the same price, quality, character, and fitness for purpose and use as any other responsive bid; and further provided that first preference shall be given to Qualified Tribal Citizen-Owned Businesses.

31.10.2 When the bid or price quote of a Qualified Native American-Owned Business is within ten percent (10%) of the lowest bid or price quote, preference shall be given to the Native American-Owned Business if the Native American-Owned Business agrees to match the lowest bid or price quote; provided that such bid or price quote is of the same or substantially the same quality, character, and fitness for purpose and use. When the bid or price quote of a Qualified Tribal Citizen-Owned Business is within ten percent (10%) of the lowest bid or price quote, and the lowest bid or price quote was made by a Qualified Native American-Owned Business, preference shall be given the Qualified Tribal Citizen-Owned Business if the Qualified Tribal Citizen-Owned Business agrees to match the lowest bid or price quote; provided that such bid or price quote is of the same or substantially the same quality, character, and fitness for purpose and use.

31.10.3 The owners and immediate family members of a Tribal Citizen-Owned Business that submits a bid or quote for a contract are prohibited from participating in the deliberation process for awarding such contract, subcontract, or other procurement device, and shall abstain from

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voting. For purposes of this Act, “immediate family member” means the Tribal Citizen’s spouse, domestic partner, grandparent, parent, sibling, child, or a household member of a Tribal Citizen.

YSMNC 31.11 Prohibited Practices

31.11.1 Tribal personnel shall not engage in Hiring Practices designed to circumvent Native American Preference by requiring criteria that are not legitimately related to the performance of any position or work.

31.11.2 The Nation shall not take any adverse action or otherwise retaliate in any way against any person who attempts to enforce the requirements set forth in this Act.

YSMNC 31.12 Enforcement

31.12.1 The following shall be responsible for enforcing and implementing this Act:

(a) The Human Resources Department shall have the responsibility and authority to implement and enforce the provisions of this Act, with the exception of practices related to Section 31.10 regarding the awarding of contracts.

(b) The Procurement Services Department shall have the responsibility of implementing and enforcing the provisions of this Act with respect to practices related to Section 31.10 regarding the awarding of contracts and bids.

31.12.2 Any Employee, Applicant or business entity may request mediation to attempt to resolve the dispute for an alleged violation of this Act prior to filing a grievance under 31.12.3. The Employee, Applicant or business entity must request mediation in writing to the respective Human Resources or Procurement Services Director responsible for the award. Mediation shall be provided as authorized and specified in Tribal law. In the absence of applicable Tribal law, mediation shall be provided by neutral third-party individual(s) or entities approved by Human Resources, or other Department as identified by Tribal Council, who have a demonstrated knowledge of Tribal law and this Act.

31.12.3 Grievances for alleged violations may be filed as follows:

(a) Employees and Applicants who believe they were wrongfully denied the Native American Preference set forth in section 31.5 of this Act may file a grievance with the Director of Human Resources, who shall review the grievance and attempt to resolve the matter after which the Human Resources Director shall issue a decision to the Employee or Applicant with a notice of the time period to appeal the matter to the designated Vice President of Human Resources, or successor position serving in a similar executive level capacity in the Human Resources Department.

i. The grievance must be timely and properly filed. Within one hundred twenty (120) days from the date of the Tribal Authorities’ approval of this amended Act, the Department of Human Resources shall promulgate policies or regulations establishing the process and deadlines for filing a grievance to the Human Resources Department under this Act, which shall be made available to all Applicants and Employees of the Nation.

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(b) Business entities that believe section 31.10 of the Act was not properly applied to them may file a grievance with Procurement Services. Procurement Services shall review the grievance and attempt to resolve the matter, after which it shall issue a decision to the business entity.

31.12.4 If any Employee, Applicant, or business entity does not agree with the final decision issued under Section 31.12.3, they must file an appeal with the San Manuel Tribal Court within ten (10) calendar days of their receipt of the decision, shall serve a copy of the appeal on the department that issued the appealed decision, and shall conform to all applicable Tribal laws and court rules as to form and process. Such decisions shall be considered administrative decisions for purposes of judicial review. If no appeal is received within the ten (10) calendar days period, the Tribal party shall implement the decision and close the matter.

31.12.5 The San Manuel Tribal Court shall decide the matter in accordance with Tribal law and court rules and shall issue appropriate orders as needed to enforce the provisions of this Act. If an initial hearing is scheduled by the San Manuel Tribal Court, the hearing shall be set not more than thirty (30) calendar days after the Court received the appeal, unless continued for good cause.

31.12.6 Nothing herein shall be construed to authorize a private cause of action in any judicial forum except as set forth in this section.

31.12.7 Nothing herein, including but not limited to the reference to federal laws, is intended to, and does not, interfere, reduce, or infringe upon the sovereignty, including without limitation the sovereign immunity, of the Nation, which retains its full rights of sovereignty and sovereign immunity under the law; provided that, the Nation waives its sovereign immunity solely for purposes of enforcement of the provisions of this Act by means of prosecuting an appeal as authorized by Section 31.12.4; only as to and for the benefit of the Employee, Applicant, or business entity who is prosecuting such an appeal; and only for the granting of injunctive relief against the Nation to the extent necessary to correct the application of the preference as to the Employee, Applicant, or business entity who is prosecuting such an appeal.

YSMNC 31.13 General Provisions

31.13.1 The provisions of this amended Act shall become effective one hundred twenty (120) days after adoption by the Tribal Authorities.

31.13.2 Previous Native American Preferences policies, resolutions, and laws issued by the Nation shall remain in effect except where inconsistent with this Act and unless and until further amended.

31.13.3 In the event any provision of this Act is found to be invalid or unenforceable for any reason, such determination shall not affect the remaining terms.

31.13.4 This Act may be amended in the manner provided for the adoption of Tribal laws. Amendments and additions to this Act shall become a part of the Act for all purposes and shall be codified and incorporated herein in a manner consistent with its numbering and organization.