

PUEBLO OF SANTA ANA

PUEBLO OF SANTA ANA TRIBAL COUNCIL

RESOLUTION NO. 2021-R-02

ADOPTING THE TORT CODE

WHEREAS, the Pueblo of Santa Ana is a federally recognized Indian tribe governed under a traditional form of government, and possessing all the inherent sovereign powers of self-government; and

WHEREAS, the Tribal Council of the Pueblo is the duly recognized decision and policy making body for the Pueblo; and

WHEREAS, the Tribal Council recognizes the need for a comprehensive Tort Code to provide civil remedies in the Tribal Court for injuries caused by negligent or wrongful acts committed on Pueblo Land; and

WHEREAS, the Pueblo's special counsel has prepared a Tort Code, in the form attached hereto, that establishes duties of care for persons on Pueblo Lands, provides for recovery of damages to persons injured by breaches of those duties, and sets forth Contemporary Court procedures for tort claims, but does not waive or limit the sovereign immunity of the Pueblo from unconsented suit, or the protection afforded by such immunity to Pueblo entities; and

WHEREAS, the Tribal Council has determined that it would be in the best interest of the Pueblo to approve and adopt the Tort Code, in the form attached hereto;

NOW THEREFORE BE IT RESOLVED, by the Tribal Council of the Pueblo of Santa Ana as follows:

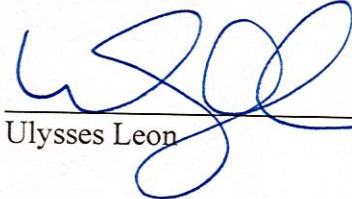
1. The Tort Code, in the form attached hereto, be and the same is hereby enacted as part of the Pueblo of Santa Ana Tribal Code, and the same shall be promulgated to the Tribal Courts, Pueblo-owned entities operating on Pueblo Lands, and other interested parties.

2. The Governor of the Pueblo or his designee are further authorized to do any and all things necessary to carry out the intent of the Tort Code.

CERTIFICATION

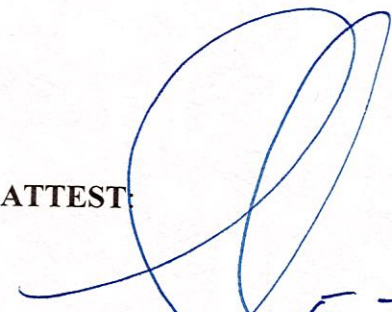
I, the undersigned, as Governor of the Pueblo of Santa Ana, hereby certify that the Pueblo of Santa Ana Tribal Council, at a duly called meeting was convened on the 2ND day of MARCH, 2021, at the Pueblo of Santa Ana, at which a quorum was present, approved the foregoing Resolution, and that 11 voted for and 0 were opposed.

GOVERNOR




Ulysses Leon

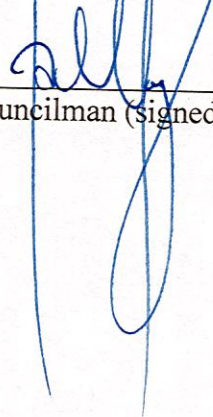
ATTEST:



E. J. LUTAN
Councilman (signed and printed name)



LEONARD GARCIA
Councilman (signed and printed name)



Councilman (signed and printed name)

TORTS

Sec. 11-1-1	<u>Purpose</u>
Sec. 11-1-2	<u>Definitions</u>
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Sec. 11-1-6	<u>Intentional Torts</u>
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Sec. 11-1-10	<u>Bench Trials: Burden of Proof</u>
Sec. 11-1-11	<u>Request by Visitor to the Gaming Enterprise</u>
Sec. 11-1-12	<u>Interpretation of this Code</u>
Sec. 11-1-13	<u>Sovereign Immunity</u>

Sec. 11-1-1 Purpose

The purpose of this Code is to provide for a remedy in the Contemporary Court for injury caused by negligent or wrongful acts committed on Pueblo Lands.

Sec. 11-1-2 Definitions

- A. "bodily injury" means physical injury to a natural person.
- B. "Code" means this Tort Code.
- C. "common carrier" means a person or entity that transports goods or passengers on regular routes at set rates.
- D. "comparative negligence" means a measurement of negligence in terms of percentage of fault.
- E. "Contemporary Court:" means the Pueblo of Santa Ana Contemporary Court.
- F. "damages" means monetary compensation awarded to a person who suffers an injury.
- G. "defective product" means a product that poses an unreasonable risk of injury to a person resulting from a condition of the product or from a manner of its use.
- H. "Gaming Enterprise" means the entity created by the Pueblo and designated by the Pueblo as having authority to conduct Class I, II, and/or III gaming on Pueblo Lands.
- I. "gross negligence" means an act or omission done without the exercise of even slight

care under the circumstances.

J. "injury" means bodily injury or property damage, or any interference with a person's legally protected right or interest.

K. "innkeeper" means a person who furnishes a room or other accommodation in exchange for consideration of any kind.

L. "negligence" means failure to exercise ordinary care.

M. "ordinary care" means the care which a reasonably prudent person would use in the circumstances.

N. "person" means any natural person, and, unless otherwise specified in the text or inconsistent with the context, a corporation, partnership of any kind, limited liability company, joint venture, estate, trust, or other non-governmental legal entity of any kind.

O. "occupant" means a person who lawfully occupies land or who has occupied land with the intent to control it; or a person who is entitled to immediate occupation of the land, so long as no other person is occupying the land.

P. "property damage" means physical damage to personal property.

Q. "Pueblo" means the Pueblo of Santa Ana.

R. "proximate cause" means that which in a natural and continuous sequence, unbroken by independent intervening cause, produces injury, and without which such injury would not have occurred.

S. "tort" means a civil wrong or injury resulting from a breach of a legal duty.

T. "trespasser" means a person who enters or remains on land owned or lawfully occupied by another without the owner's or occupant's consent or other legal privilege.

U. "visitor" means a natural person who enters or remains upon the premises of another with the express or implied permission of the owner or occupant of the premises.

Sec. 11-1-3 Duty of Care

A. Duty to others and self. Every person has a duty to exercise ordinary care for the safety of others and others' property. Every person also has a duty to exercise ordinary care for the person's own safety and the safety of his or her property.

B. Duty to act affirmatively to protect others. A common carrier, innkeeper, and owner or occupant of land open to the public each owes a duty of ordinary care to protect visitors from conditions that create unreasonable risks of harm, arising in the course of that relationship, of which the common carrier, innkeeper, or possessor knows or by exercise of ordinary care should know.

C. Duty to trespassers. Common carriers, innkeepers, and owners and occupiers of land open to the public owe a duty to trespassers not to cause injury to them willfully, wantonly, or through gross negligence.

D. Duty to person in one's custody. One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his or her normal opportunities for protection owes a duty of ordinary care to protect such persons from conditions that create unreasonable risks of harm, arising in the course of that custodial relationship, of which the custodian knows or by exercise of ordinary care should know.

E. Duty with regard to actions of third persons. One has no duty to control the conduct of another person so as to prevent him or her from causing injury to a third person unless (a) one has a special relationship with another that imposes a duty to control the other person's conduct, such as a parent/child relationship or an employer/employee relationship; or (b) one has a special relationship with the third person that gives the third person a right to protection, such as between an owner or occupant of land open to the public and a visitor.

F. Voluntary assumption of duty. A person who is under no duty to act, but does so voluntarily, becomes obligated to act with reasonable care.

G. Supplier of a product. The supplier of a product has a duty to use ordinary care to avoid a foreseeable risk of injury caused by a condition of the product, the way it is used, or the manner in which its misuse may be reasonably foreseeable. This duty is owed to persons who can reasonably be expected to use or reasonably foreseeably misuse the product, and persons who can reasonably be expected to be in the vicinity during the use or reasonably foreseeable misuse of the product.

H. Products liability. A supplier who puts a defective product on the market is strictly liable for the injury caused by it.

I. Duty imposed by Pueblo law. A duty of care may also be imposed by Pueblo law or regulation.

Sec. 11-1-4 Recovery of Damages upon Breach of Duty

A. A person who breaches a duty of care owed to another, which breach is the proximate cause of injury to the other, is subject to an action in the Contemporary Court under this Code for damages caused by the breach.

B. It is a plaintiff's burden to establish by a preponderance of the evidence that the defendant's breach of duty was the proximate cause of plaintiff's injury.

C. A defendant's liability is limited to those physical harms that result from the risks created by the conduct for which the defendant is responsible.

D. The Pueblo hereby adopts a system of pure comparative fault. The fact finder shall find and compare the negligence of all persons who may have contributed to an injury, regardless of whether any such person is a party to the action, and the damages recoverable shall be apportioned among them according to the relative degree of the negligence attributable to each such person, except that no damages may be awarded against a person who is not party to the action.

E. A person who violates a Pueblo law or regulation commits negligence per se, and when another is injured as the direct and natural consequence of that negligence, the person injured may recover his or her damages if he or she is within the class of persons for whose benefit the Pueblo law or regulation was enacted or adopted.

F. A person injured by a defective product may file an action in the Contemporary Court against the supplier under this Code for damages caused by the defective product, to the extent allowed under federal law.

Sec. 11-1-5 Wrongful Death Action

A. Whenever the death of a natural person is caused by the negligence or wrongful act of another, which negligence or wrongful act would, if death had not ensued, have entitled the party injured to maintain an action in the Contemporary Court and recover damages in respect thereof, then, and in every such case, the person or persons who would have been liable, if death had not ensued, shall be liable in an action for damages, notwithstanding the death of the person injured.

B. An action under this Section may be brought in the Contemporary Court by the personal representative of the estate of the deceased. A cause of action accrues under this section on the date of death. The cause of action shall be deemed an asset of the estate, and any proceeds thereof shall pass to the lawful heirs and devisees of the estate.

Sec.11-1-6 Intentional Torts

A. Assault. A person who acts intentionally, causing another person to reasonably believe that he or she is about to be touched in a harmful or offensive manner, is liable to that other person for damages.

B. Battery. A person who acts intentionally, causing harmful or offensive contact with another person, is liable to that person for damages.

C. Conversion. A person who wrongfully exerts substantial dominion or control over another's personal property is liable to that person for damages.

D. Prima Facie Tort. A person who intentionally acts or fails to act, intending that the action or failure to act would cause harm to another person, or knowing that the act or failure to act would cause harm to another person, and where that act or failure to act does cause harm to that other person, is liable to that person for damages.

Sec. 11-1-7 Defenses to Intentional Torts

A. Consent. A plaintiff's valid consent to the defendant's act or omission is a defense to an intentional tort, but only to the extent of the scope of the consent. Consent is not valid if the plaintiff lacked the capacity to consent due to age, mental incapacity, or impairment, or if consent is given as a result of duress or fraud.

B. Self-Defense, Defense of Others, or Defense of Property. Self-defense, defense of others, or defense of property is a defense to a claim for damages based on an intentional tort, provided that the threatening conduct to which the defendant is responding is in progress or imminent, the defendant has a reasonable belief of the threat to which he or she is responding, and defendant uses only the amount of force necessary to protect himself or herself against the threat.

C. Necessity. Necessity is a defense to the tort of conversion. A person may interfere with another's personal property where there is reasonable necessity to avoid threatened harm, provided that the defendant shall be liable for actual harm done to another's personal property.

Sec. 11-1-8 Limitations

Any action under this Code must be brought within three years after the cause of action accrues. Except as specifically provided otherwise, a cause of action under this Code is deemed to accrue on the date when the injury is sustained.

Sec. 11-1-9 Procedures

The Rules of Civil Procedure applicable to cases in the Contemporary Court shall apply to claims brought under this Code

Sec. 11-1-10 Bench Trials: Burden of Proof

All cases filed under this Code shall be tried in the Contemporary Court, without a jury. The plaintiff shall have the burden to prove his or her case by a preponderance of the evidence.

Sec. 11-1-11 Request by Visitor to the Gaming Enterprise

Upon request of a visitor or the visitor's designated representative to the Gaming Enterprise, the Gaming Enterprise shall provide a copy of this Code, the Gaming Enterprise's name, address, and telephone number, and the Contemporary Court's mailing address and telephone number.

Sec. 11-1-12 Interpretation of this Code

The Contemporary Court may look to case law from tribes or states that have adopted a comparative fault system when interpreting the provisions of this Code, but the Contemporary Court is not bound by such case law and nothing in this Code shall be construed as suggesting or implying that such case law applies to actions brought under this Code in the Contemporary Court.

Sec. 11-1-13 Sovereign Immunity

Nothing herein is intended to waive, nor shall anything in this Code be deemed to waive, the sovereign immunity of the Pueblo, or the sovereign immunity protection accorded its agencies, its officials, or its employees, or of any of the Pueblo's business entities, including the Gaming Enterprise, their officers, or employees. A claim under this Code against any of the foregoing may be brought in the Contemporary Court only if there is a valid waiver of sovereign immunity or sovereign immunity protection for that claim, and then only in strict accordance with any such waiver.