

DRY CREEK EMPLOYMENT DISCRIMINATION COMPLAINT ORDINANCE
Enacted on September 22, 2018

1.0 Title

This Ordinance shall be known as the “Dry Creek Employment Discrimination Complaint Ordinance.”

2.0 Statement of Purpose

This Ordinance is adopted by the Dry Creek Rancheria Band of Pomo Indians, a federally recognized Indian tribe (“Tribe”), pursuant to Section 12.3(f) of the Tribal-State Gaming Compact between the Tribe and the State of California (“Compact”). This Ordinance does not constitute a general waiver of Tribal sovereign immunity. This Ordinance shall be strictly construed to provide the exclusive process for the consideration and resolution of employment-related claims alleged to have arisen in connection with, or relating to the operation of the Tribe’s Gaming Operation, Gaming Facility, or Gaming Activities. This Ordinance covers only those claims that would be considered employment-related claims were they to arise under the laws of the State of California and which are susceptible of being covered by the Insurance Policy (as defined below). This Ordinance expressly preempts all other processes and remedies for alleged claims within its scope, pursuant to the Compact, the Indian Gaming Regulatory Act, 25 U.S.C. §2701 et.seq., and other applicable law.

3.0 Definitions

Unless otherwise required by the context, the following words and phrases shall be defined as follows:

3.1 “Actual Damages” means the dollar value of the ascertainable loss of money or property sustained as a result of an Employment-Related Claim covered under this Ordinance.

3.2 “Authority” means the River Rock Entertainment Authority, a governmental instrumentality of the Tribe.

3.3 “Authority Board” means the Board of Directors of the Authority.

3.4 “Award” means money damages determined to be payable in order to compensate for an Employment-Related Claim recognized under this Ordinance, without regard to any deductible amount contained in the Insurance Policy.

3.5 “Board of Directors” means that body elected from the membership of the Tribe and consisting of officers, delegates, and others who take action and represent the Tribe as necessary to carry out the directions of the Tribal Council.

3.6 “Casino” means the River Rock Casino, a governmental economic development project of the Authority.

3.7 “Claim” means a written document, together with supporting information and documentation, submitted by a Claimant pursuant to the procedures and requirements set forth in Section 10.0 of this Ordinance, seeking monetary damages for an Employment-Related Claim.

3.8 “Claimant” means an Employee who submits a Claim under this Ordinance alleging an Employment-Related Claim.

3.9 “Claims Administrator” means the person appointed to administer all Claims filed under this Ordinance.

3.10 “Compact” means the Tribal-State Gaming Compact between the Tribe and the State of California executed on or about August 18, 2017 – Effective January 22, 2018.

3.11 “Employee” means a person who is employed by the Tribe in connection with, or relating to, the Gaming Operation, Gaming Facility, or Gaming Activities, whereby that person receives a salary or hourly wages directly from the Tribe for services rendered. An independent contractor, outside consultant, or vendor is not an Employee. The term does not include agents or representatives of the United States or of the State of California or any of their political subdivisions.

3.12 “Employment-Related Claim” means harassment, including sexual harassment, in the workplace; discrimination in the workplace on the basis of race, color, religion, ancestry, national origin, gender, marital status, medical condition, sexual orientation, age, or disability; or retaliation against persons who oppose discrimination or participate in proceedings under this Ordinance, but only to the extent that such conduct would give rise to a cause of action under California law. Nothing herein shall preclude the Tribe from giving a preference in employment to members of the Tribe, members of federally recognized Indian tribes, or other Native Americans, pursuant to a duly adopted tribal ordinance.

3.13 “Gaming Activities” means the Class III gaming activities authorized under the Compact.

3.14 “Gaming Commission” means the Dry Creek Gaming Commission.

3.15 “Gaming Facility” means any building, including but not limited to the River Rock Casino, in which Gaming Activities or gaming operations occur, or in which the business records, receipts, or other funds of the Gaming Operation are maintained (but 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 the Gaming Operation rather than providing them with an incidental benefit, provided that such area is covered by Insurance, as defined herein. Nothing herein shall be construed to apply in a manner that does not directly relate to the operation of Gaming Activities.

3.16 “Gaming Operation” means the Tribe’s governmental gaming project, including but not limited to the River Rock Casino, which offers and operates Class III gaming activities,

whether exclusively or otherwise, and which project shares all aspects of the Tribe's sovereign immunity.

3.17 "Insurance" or "Insurance Policy" means only that valid and binding policy of liability insurance procured in connection with the Gaming Operation, with liability coverage and policy limits solely as described under Section 12.3(f) of the Compact.

3.18 "Ordinance" means this Dry Creek Employment Discrimination Complaint Ordinance.

3.19 "Tribal Claims Commission" means the three-member body formed to hear Claims pursuant to Section 11.0 of this Ordinance.

3.20 "Tribal Council" means the governing body of the Tribe, as set forth in the Tribe's Articles of Association.

3.21 "Tribal Court" means any Tribal agency or entity serving as the judicial branch of the Tribe. In the event the Tribe establishes a Tribal Court, it shall take the place of the Tribal Claims Commission.

3.22 "Tribe" means the Dry Creek Rancheria Band of Pomo Indians.

4.0 Effective Date of This Ordinance

This Ordinance shall be deemed to have taken effect on the date on which the Tribal Council adopts it, and any subsequent amendments to this Ordinance shall become effective on the date such amendments are adopted by the Tribal Council, unless otherwise specified in such amendments. The provisions of this Ordinance shall not apply retroactively to any Claim based on conduct alleged to have occurred before the effective date of this Ordinance.

5.0 Limited Waiver of Sovereign Immunity

5.1 The Tribe retains in full its sovereign immunity except to the extent that it is expressly and unequivocally waived by this Ordinance in full compliance with tribal law. Members of the Board of Directors, the Authority Board, the Gaming Commission, the Tribal Council, and all other Tribal and Casino officials, officers, employees, representatives, and agents are and each shall remain immune from suit for actions taken during the course and within the scope of their duties in their respective roles or in any official capacity.

5.2 Claims brought under this Ordinance shall be brought against the Gaming Operation and must be pursued solely through the Tribal Dispute Resolution Process outlined in this Ordinance. The Tribe does not waive its immunity or that of the Gaming Operation from suit in any state or federal court, or for any purpose, except as expressly provided herein.

5.3 Claims against the Gaming Operation may be brought under this Ordinance in connection with any Employment-Related Claim arising out of the Claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming

Activities, and the Tribe waives its immunity to the limited extent necessary to permit the application and enforcement of this Ordinance in respect of such claims and any judgment arising therefrom, in the Tribe's Tribal Court, or if the Tribal Court is not available, in the Tribal Claims Commission, and in the Tribal Appellate Court, but only up to the greater of three million dollars (\$3,000,000) or the limits of the Insurance Policy; provided, however, such waiver shall not be deemed to waive or otherwise limit the Tribe's sovereign immunity for any portion of the claim that exceeds three million dollars (\$3,000,000) or the Insurance Policy limits, whichever is greater; and provided, however, that nothing herein requires the Tribe to agree to liability for punitive damages or to waive its right to assert its sovereign immunity in connection therewith; and provided further that (i) any such Claim must be pursued through the Tribal Dispute Resolution Process set forth herein, (ii) such Claim may be pursued only to the extent that such injuries are expressly and undisputedly covered by the Insurance Policy, and (iii) any judgment rendered in favor of a Claimant shall be for Actual Damages only, and satisfied solely from proceeds of the Insurance, without regard to any deductible amount contained in the Insurance Policy, and not from assets of the Tribe, including but not limited to assets of the Authority or the Gaming Operations, except to the extent of the deductible, if any, which shall be satisfied solely from assets of the Gaming Operation.

5.4 The sovereign immunity of the Tribe and its Gaming Operation are not waived in any way with regard to any Claim that does not arise out of, or is not connected with activities engaged in by the Gaming Operation or its employees, and that does not occur at the Gaming Facility or in connection with the Gaming Operation.

5.5 The procedures and timelines set forth in this Ordinance are jurisdictional. The limited waiver of sovereign immunity set forth in this Ordinance shall not extend to Claims that do not strictly comply with the procedures and timelines set forth herein.

5.6 The Tribe is not liable for any injury proximately caused by an intentional or negligent act that was committed outside the course and scope of the employment and/or authority of an official, employee or agent of the Tribe or Gaming Operation whose negligence or intentional misconduct are alleged to have caused the injury.

6.0 Governing Law

All claims under this Ordinance shall be decided in a manner consistent with California law governing claims of harassment, retaliation, or employment discrimination arising out of the Claimant's employment in, in connection with, or relating to the operation of, the Gaming Operation, Gaming Facility or Gaming Activities, except that any and all laws governing punitive damages shall not be applicable to any claim raised under this Ordinance. Nothing in this provision shall be construed as a submission of the Tribe to the jurisdiction of the California Department of Fair Employment and Housing or the California Fair Employment and Housing Commission, or any successor agencies thereto. This provision does not constitute general consent to California law, nor is it intended as a waiver of the Tribe's sovereign immunity from unconsented suit or legal process.

7.0 Exclusive Remedy

7.1 This Ordinance provides the exclusive process and forum for the consideration and resolution of Employment-Related Claims authorized by this Ordinance.

7.2 In the event an action seeking damages for an Employment-Related Claim arising from the same incident is filed in another forum or venue during the pendency of a Claim pursuant to this Ordinance, the Claim filed pursuant to this Ordinance shall be considered to have been abandoned and shall not be eligible thereafter for an award of any kind. This provision shall not be construed to confer any right to bring an action in any other forum, nor as acquiescence by the Tribe or the Gaming Operation to a claim of jurisdiction by a court or agency of any other sovereign.

8.0 Covered Claims, Limits, and Exclusions

8.1 Covered Claims. Only those causes of action and remedies created by this Ordinance are within the scope of the Tribe's limited waiver of sovereign immunity. Nothing in this Ordinance creates any substantive right to relief or consents to the maintenance against the Tribe of any Claim based upon any act or omission of persons who are not officers, employees, or agents of the Tribe.

8.2 Limits. The Tribe shall not be liable for interest prior to judgment. In no event shall the Tribe be held liable for damages in excess of \$3,000,000, and then only to the extent that such damages are covered by insurance required under the terms of the Compact.

8.3 Exclusions.

(A) This Ordinance does not provide any remedy or forum for any alleged occupational injury or illness to an Employee arising from or related to employment.

(B) This Ordinance does not provide any remedy or forum for an alleged Employment-Related Claim that occurred more than one year prior to the filing of a Claim.

(C) This Ordinance does not provide any remedy or forum for claims against the Tribe for equitable indemnity or contribution arising from third-party litigation.

(D) This Ordinance does not provide any remedy or forum for claims against the Tribe to recover punitive damages or attorneys' fees or costs.

9.0 Exhaustion of Tribal Dispute Resolution Process

Claimant must first exhaust the tribal dispute resolution process for resolving a Claim as provided in section 10.0 of this Ordinance. Claimant's failure to exhaust or to strictly comply with any aspect of the tribal dispute resolution process shall result in the forfeiture of Claimant's opportunity to pursue a Claim against the Gaming Operation. The Tribe does not waive its sovereign immunity in any forum or for any Claim that does not strictly comply with the requirements of the tribal dispute resolution process.

10.0 Tribal Dispute Resolution Process

10.1 Notice of Alleged Occurrence. A person seeking monetary damages against the Tribe based upon an Employment-Related Claim must submit a written notice of such claim to the Claims Administrator within one hundred-eighty (180) days of the alleged occurrence of the Employment-Related Claim.

10.2 Notice of Tribal Dispute Resolution Process. No later than fourteen (14) days from receipt of the written notice submitted by an Employee in accordance with Section 10.1 of this Ordinance, the Claims Administrator shall provide notice to the Employee that in order to pursue a Claim, he or she is required to first exhaust the tribal dispute resolution process described herein, and if dissatisfied with the resolution, is only then entitled to adjudicate his or her claim before the Tribal Court, or if none, the Tribal Claims Commission, at no cost to the Claimant (except for the Claimant's attorney's fees). This notice shall also provide that the Claimant must bring his or her Claim within one hundred eighty (180) days of receipt of the written notice, and the one hundred eighty (180) day limitation period shall be prominently displayed on the front page of the notice. Such notice shall be served upon the Employee either personally or by certified mail, return receipt requested executed by the Claimant (or any other form of delivery by which confirmation of receipt may be obtained). The adjudication, including any appeal, shall take place on the Tribe's Indian lands, or at another location within the County.

10.3 Filing of Claim. Claimant shall file a Claim in writing with the Claims Administrator within one hundred eighty (180) days of receipt of the written notice provided in accordance with Section 10.2 of this Ordinance. Such Claim must include all information required under Section 10.4 of this Ordinance and be delivered by certified mail, return receipt requested (or any other form of delivery by which confirmation of receipt may be obtained). Failure to timely file a Claim in accordance with the requirements of this Ordinance shall result in the forfeiture of Claimant's opportunity to pursue a Claim under this Ordinance. This time limit is jurisdictional, and shall be strictly construed to preclude late-filed Claims.

10.4 Contents of Claim. A Claim must include the following information:

(A) The name, mailing address, and telephone number of Claimant and Claimant's legal representative, if any;

(B) The date, location, and detailed account of the alleged incident or occurrence that gave rise to the Claim;

(C) The identity or description of all persons known to Claimant or believed by Claimant to be involved in the incident or occurrence that gave rise to the Claim;

(D) The identity or description of all persons known to Claimant or believed by Claimant to have personal knowledge of the incident or occurrence that gave rise to the Claim, including without limitation, name, address, and phone number of such persons;

(E) A detailed description of the nature and cause of the alleged damage or injury, including the identification of the type and amount of monetary damages requested;

(F) The identity or description of all persons known to Claimant or believed by Claimant to have personal knowledge of the alleged damage or injury suffered by Claimant arising out of, connected with, or related to the incident or occurrence that gave rise to the Claim, including without limitation, name, address, and phone number of such persons;

(G) Copies of all documentation in the possession or control of Claimant or his/her legal representative relating to the Claim, including without limitation, previously filed complaints of an alleged Employment-Related Claim with the Tribe, investigative reports and documentation of any alleged Employment-Related Claim, medical records and reports, security reports, witness statements, photographs, and police reports; and

(H) The Claim must be signed by the Claimant under penalty of perjury. If the Claimant is unable to sign the Claim because of physical or mental incapacity, the Claim must be signed under penalty of perjury by another person with personal knowledge of the contents of the Claim. The failure of the Claimant to provide the information required by this Section may be grounds for denial of the Claim.

10.4 Burden of Proof. The Claimant bears the burden of proving, by a preponderance of the evidence, that Claimant was subjected to an Employment-Related Claim and that Claimant suffered actual damages caused by such Employment-Related Claim.

10.5 Investigation. The Claims Administrator shall investigate the Claim, and may, in its discretion, request additional information from Claimant. In addition, the Claims Administrator may request Claimant and witnesses to appear before it and to give recorded testimony under oath as to facts underlying the Claim. The failure of Claimant to provide additional information requested by the Claims Administrator or failure of Claimant to appear before the Claims Administrator and to give recorded testimony when requested may result in the denial of the Claim.

10.6 Claims Administrator Decision. The Claims Administrator shall issue a written decision, which shall be a reasoned decision based upon the facts surrounding the dispute. Such decision shall be sent by certified mail, return receipt requested (or any other form of delivery by which confirmation of receipt may be obtained) within 180 days of receipt of the Claim, unless such time period is extended by Claimant and the Claims Administrator by mutual agreement. Any decision shall be sent to Claimant at the address provided in the Claim. If the Claim is denied in whole or in part, the Claims Administrator shall include in the decision notice to Claimant of the option to appeal to the Tribal Court, or if none is available, to the Tribal Claims Commission.

11.0 Appeal to Tribal Court or Tribal Claims Commission

11.1 If the Claimant is dissatisfied with the Claims Administrator's decision, the Claimant may seek resolution in the Tribe's Tribal Court in accordance with the rules of the Court, or if no Tribal Court is available, through the Tribal Claims Commission. The rules of any Tribal Court must incorporate the essential elements of fairness and due process. No member of the Tribal Court may be employed by the Gaming Facility or the Gaming Operation.

11.2 The Tribal Claims Commission shall consist of three (3) members. The Tribal Claims Commission shall consist of at least one (1) Commissioner who is a representative of the tribal government and at least one (1) Commissioner who is not a member of the Tribe. No member of the Tribal Claims Commission may be employed by the Gaming Facility or the Gaming Operation.

11.3 A request that the Tribal Claims Commission assume jurisdiction of the dispute shall be made by filing a notice of appeal setting forth in detail the Claimant's specific reasons for requesting such jurisdiction and rejecting the Claims Administrator's decision. This request must be delivered to the Gaming Commission within thirty (30) days after receipt of the Claims Administrator's decision. Within ten (10) days after receiving the Claimant's request, the Gaming Commission shall send written notice to the Claimant stating that the Tribal Claims Commission has assumed jurisdiction over the dispute.

11.4 The Tribal Claims Commission shall, within thirty (30) days after receiving the notice from the Gaming Commission, send a second written notice to the patron setting a date, time and location for the Tribal Claims Commission to hear the appeal, the date of such hearing shall be not less than thirty (30) days after the date of such second notice. In the event the Claimant seeks to conduct pre-hearing discovery, such request must be noted in the notice of appeal. The Tribal Claims Commission shall permit pre-hearing discovery to the extent that it deems such discovery is reasonably necessary to ensure a fair and accurate presentation of relevant facts. Discovery in Tribal Court or Tribal Claims Commission proceedings shall be governed by tribal rules and procedures comparable to the rules set forth in section 1283.05 of the California Code of Civil Procedure.

11.5 The Tribal Claims Commission shall hear the dispute and, at its discretion, may accept evidence from the Claimant and/or the Gaming Operation.

11.6 The Tribal Claims Commission shall issue a written decision within sixty (60) days after the conclusion of a hearing on the matter. Any judgment shall be limited to the amount in controversy, or the limits of the Insurance Policy, whichever is less, and shall not include an award of punitive damages.

11.7 As a condition of settling any dispute, the Claimant shall execute a settlement and release of all claims.

11.8 If the award is issued against the Gaming Operation, every effort shall be made to satisfy the award within sixty (60) days after the date the award is issued. No award is valid, however, that is not covered by the policy limits of the Insurance, or exceeds the limits set forth in this Ordinance.

12.0 Appeal to Tribal Appellate Court

12.1 Any party dissatisfied with the award of the Tribal Court or the Tribal Claims Commission may appeal the decision to the Tribal Appellate Court in accordance with the rules of

the Appellate Court.

12.2 The Tribal Appellate Court shall consist of at least one (1) person who is knowledgeable of the laws prohibiting harassment, retaliation, or employment discrimination. No member of the Tribal Appellate Court may be employed by the Gaming Facility or the Gaming Operation.

12.3 Resolution of the dispute before the Tribal Appellate Court shall be at no cost to the Claimant (except for the Claimant's attorney's fees).

12.4 The Tribal Appellate Court shall review all legal determinations by the Tribal Court or the Tribal Claims Commission, but shall not set aside any factual determinations supported by substantial evidence. If there is a conflict in the evidence and a reasonable fact-finder could have found for either party, the decision of the Tribal Court or the Tribal Claims Commission will not be overturned on appeal.

12.5 Any judgment of the Tribal Appellate Court shall be limited to the amount in controversy, or the limits of the Insurance Policy, whichever is less, and shall not include an award of punitive damages. The Tribal Appellate Court does not have the authority to award costs, including, without limitation, attorney's fees, costs, lower court costs, or fees.

12.6 Final and Binding Decision. The opinion of the Tribal Appellate Court shall be final and not subject to further appeal.

13.0 Notice of Ordinance and Tribal Dispute Resolution Process

The Tribe shall provide written notice of this Ordinance and the tribal dispute resolution process in its employee handbook. The Tribe also shall post and keep posted in prominent and accessible places in the Gaming Facility where notices to employees and applicants for employment are customarily posted, a notice setting forth the pertinent provisions of this Ordinance and information pertinent to the filing of a Complaint.

14.0 Amendments

This Ordinance may be revised, amended or repealed from time to time by the Tribal Council consistent with the Compact as the Tribal Council shall deem appropriate. Regulations promulgated by the Gaming Commission under this Ordinance are subject to revision, repeal or amendment by the Gaming Commission.

15.0 Severability

If any section of this Ordinance, or its application to any person or entity or circumstances is held invalid, the remainder of the Ordinance, 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.

CERTIFICATION

The foregoing Dry Creek Employment Discrimination Complaint Ordinance was presented at a Tribal Council Meeting held on September 22, 2018 and was approved with a quorum present and such Code has not been rescinded or amended in any way.

 CWL-

Chris Wright
Chairman

 9-22-2018

Date

 Margie Rojas

Margie Rojas
Secretary/Treasurer

 9-22-2018

Date