

Subpart R Business and Commercial Activities

R-1 Gaming Ordinance

(a) The Tribal Council has enacted a comprehensive gaming ordinance entitled the Third Amended and Restated Gaming Ordinance of the Pueblo of Pojoaque. All Gaming shall be conducted in accordance with this Ordinance. A copy of the Ordinance shall be kept on file with the Pojoaque Pueblo Gaming Commission.

(b) Civil Remedies. Except as otherwise provided in the Gaming Ordinance, any person authorized to enforce the Ordinance may bring a civil action in the Tribal Court against any person who violates the Ordinance and recover monetary damages, attorney fees, injunctive relief, and/or any other relief that the Tribal Court deems is just and equitable under the circumstances.

(c) Jurisdiction. Except as otherwise provided in the Gaming Ordinance, the Tribal Court shall have exclusive jurisdiction over all matters concerning the administration and enforcement of the Ordinance.

R-2 Consumer Financial Services Regulatory Code

(a) Policy.

1. Policy of Self-Government. The Pueblo is firmly committed to the principle of self-government. Revenues from consumer financial services shall be utilized and expended only for the following purposes:

- A. To fund the Pueblo's government operations or programs.
- B. To provide for the public health and general welfare of the Pueblo and its members and visitors to the Pueblo's community.
- C. To promote the Pueblo's economic development and self-sufficiency.
- D. To donate to charitable organizations.

2. Consumer Financial Services Policy. The establishment, promotion and operation of consumer financial services are necessary, provided that such services are regulated and controlled by the Pueblo pursuant to this Code and that the revenues of such services are used exclusively for the benefit of the Pueblo.

3. Responsibility for Regulation. The Pueblo shall have the sole responsibility for the regulation and conduct of consumer financial services authorized by this Code.

4. Consumer Financial Services Authorized. Consumer financial services that are subject to licensing under this Code are authorized and permitted only as described in this Code and any regulations of the Authority adopted under this Code.

(b) Definitions. In this Code, except where otherwise specifically provided or unless the context otherwise requires, the following terms and expressions shall have the following meanings:

1. “Applicant” means any Person who has applied for a License under the provisions of this Code.
2. “Application” means a request for the issuance of a License under the provisions of this Code.
3. “Code” means this Financial Services Regulatory Code.
4. “Consumer” means a natural person who acquires goods, services, or credit primarily for personal, family or household purposes. The term does not include a person who acquires goods, services, or credit primarily for business, commercial, or investment purposes.
5. “Consumer Financial Services” or “Financial Services” means the business of providing goods, services, or credit to consumers in transactions subject to this Code in exchange for interest, fees, rent, or other form of consideration on the Pueblo’s land or within the Pueblo’s jurisdiction. The term includes, without limitation, loans, payday loans, installment loans, credit sales, pawn transactions, sale-leaseback transactions, rent-to-own transactions, guaranties, letters of credit, or other forms of Consumer Financial Services.
6. “Consumer Financial Services Regulatory Authority” or “Authority” means the regulatory authority established and described in Section (d) of this Code.
7. “Employee Licensee” means a person who works on the Pueblo’s jurisdictional land that is licensed by the Authority to be employed by a Licensee.
8. “Financial Services Licensee” means a person that is licensed by the Authority to engage in the business of providing Consumer Financial Services.
9. “License” means the official, legal and revocable Financial Services License issued by the Authority. A License relating to Consumer Financial Services is a revocable privilege subject to revocation in accordance with this Code. A License is a revocable privilege to do business within the jurisdiction of the Pueblo of Pojoaque.
10. “Licensee” means any Financial Services Licensee, Vendor Licensee or Employee Licensee whenever used generally in this Code.

11. "Person" means any natural person, partnership, joint venture, association, trust, firm, estate, club, society, receiver, assignee, trustee in bankruptcy, political entity, company, corporation or other group, however organized, and any owner, director, officer or employee of any such entity or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, the government of the Pueblo, any governmental entity of the Pueblo or any of the above listed forms of business entities that are wholly owned or operated by the Pueblo, or any other entity whatsoever, who engages or seeks to engage in the business of Consumer Financial Services pursuant to this Code; provided, that the term does not include the Federal Government, State Government, or any agency thereof.

12. "Pueblo" means the Pueblo of Pojoaque.

13. "Tribal Council" means the Pueblo of Pojoaque Regular Tribal Council, the primary governing body of the Pueblo as empowered by the Pueblo's traditional government and pursuant to laws of the Pueblo.

14. "Vendor Licensee" means a Person or entity that is licensed by the Authority to provide services directly to a Financial Services Licensee, including, but not limited to management services, customer service support, marketing services and software services.

(c) General Provisions.

1. Construction. In construing the provisions of this Code, the following shall apply:

A. The provisions of this Code, being necessary for the benefit of the Pueblo and its members, shall be liberally construed to effectuate its purpose and to promote substantial justice.

B. Tribal Council Resolution 2013-100 (November 20, 2013) and the Policy stated in Section (a) constitute the standards to be observed by the Authority in the exercise of its discretionary powers under the Code, in the adoption of implementing regulations, in the issuance of orders and declaratory statements, in the examination and supervision of Licensees, and in all matters of construction and application of the Code required for any determination or action by the Authority.

C. Nothing in this Code shall be deemed or construed to be consent of the Authority to the jurisdiction of the United States or of any state, or of any other tribe with regard to the business or affairs of the Authority.

D. No Person acting, or who has acted, in good faith reliance upon a rule, order, or declaratory statement issued by the Authority shall be subject to any criminal, civil, or administrative liability for such action, notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the rule, order, or declaratory statement. In the case of an order or a declaratory statement that is not of general application, no Person other than the Person to whom the order or declaratory statement was issued is

entitled to rely upon it, except upon material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.

E. Words of the masculine gender or neutral include masculine and feminine genders and are neutral.

F. Words in the present tense include the future and past tenses.

G. Words in the singular number include the plural, and words in the plural number include the singular.

H. Any and all decisions and orders of the Authority, the Pueblo of Pojoaque Tribal Court, or the Tribal Council shall be accorded primary deference as to the construction and interpretation of this Code.

2. Severability. If any section of this Code is invalidated by a court of competent jurisdiction, the remaining sections shall not be affected thereby.

3. Effective Date. This Code shall take effect and be in full force and effect from and after the date of its final passage and approval by the Tribal Council.

(d) Consumer Financial Services Regulatory Authority.

1. Regulatory Agent; Compensation, Duties.

A. Regulatory Agent; Term of Office. The Authority shall initially be governed by a Regulatory Agent(s) appointed by the Tribal Council. The Tribal Council may increase the number of regulatory agents by Resolution as it deems necessary to conduct the governmental operations of the Authority. The Agent shall be appointed for a term of at least one (1) year, or until the Agent is otherwise replaced or removed by the Tribal Council.

B. Compensation. The compensation of the Agent shall be established from time to time by the Tribal Council or as the Tribal Council may delegate to the Authority.

C. Duties. The Agent shall have the following responsibilities:

- i. Oversee and have responsibility for the day-to-day operations of the Authority, including supervision of Authority employees;
- ii. Serve as the agent for service of process for the Authority; and
- iii. Conduct or oversee the conduct of any meetings or hearings held by the Authority in accordance with this Code or further directive of the Tribal Council.

D. Agent Qualifications. Any person appointed as an Agent of the Authority shall meet the following qualifications:

- i. The Agent shall have expertise, experience, education or a combination thereof in the following areas: financial services, finance, management, business, governmental regulation, law, and/or Pueblo policy.
- ii. The Agent shall be at least twenty-one (21) years of age and show proof of High School Diploma or equivalent.

iii. No person shall serve as Regulatory Agent if:

a. His/her prior activities, criminal record, if any, or reputation, habits or associations:

(1) Pose a threat to the public interest;

(2) Threaten the effective regulation and control of financial services;
or

(3) Enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of financial services.

b. He/she has been convicted of or entered a plea of no contest to any felony or to a misdemeanor involving breach of trust or dishonesty in any jurisdiction in the last ten (10) years from the date of appointment as Regulatory Agent; or

c. He/she, or any member of his or her Immediate Family has an ownership, partnership or other direct monetary or financial interest in the conduct of any Licensee or is in privity with a Financial Services Licensee, or one of its agents, contractors, or sub-contractors; or if he or she has any other personal or legal relationship that places him/her in a conflict of interest with any Licensee. For purposes of this subsection, "Immediate Family" includes spouse or significant other, parents, children, and siblings. Ownership of a Licensee by virtue of membership in the Pueblo is not a per se monetary or financial interest in the conduct of any Licensee.

2. Meetings. The Authority shall hold regular meetings at least quarterly or as otherwise determined by the Authority.

3. Prohibited Acts. The Agent and Authority employees shall not do any of the following with respect to any Licensee under the jurisdiction of the Authority:

A. Be indebted, either directly or indirectly, as borrower, accommodation endorser, surety or guarantor to any Licensee unless such indebtedness was contracted before becoming employed by or appointed to the Authority and is fully disclosed to the Authority. Notwithstanding the foregoing, an employee of the Authority other than a Commissioner may become so indebted; provided that, while the debt is outstanding, the borrower shall not participate in any examination of any Licensee conducted by the Authority and the indebtedness is:

- i. Incurred on terms no more favorable than those available to the general public, and
- ii. Fully disclosed to and approved by the Chairperson before funding, including the following information:
 - a. The date of the indebtedness;
 - b. The amount;
 - c. The interest rate; and
 - d. Security.

B. Be an officer, director, or employee of any Licensee.

C. Be interested in, directly or indirectly, or receive from any Licensee or any officer, director, or employee of any Licensee any salary, fee, compensation or other valuable thing by way of gift, donation, credit, or compensation for services or otherwise; except that an Agent or Authority employee is permitted to receive his or her pro-rata share of revenue that has been generated by a Licensee and is distributed among all eligible Pueblo members by virtue of membership in the Pueblo.

4. Removal of Regulatory Agent / Vacancy.

A. Removal. The Agent may be removed by the Tribal Council for the following reasons: serious inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance, misconduct in office, or for any conduct which threatens the honesty and integrity of financial services or the Authority, is contrary to the best interests of the Pueblo, or violates the letter or intent of this Code. The decision of the Tribal Council concerning removal of a Regulatory Agent shall be final.

B. Vacancy. If the Agent shall die, resign, be removed or for any reason be unable to serve as an Agent, the Tribal Council shall declare the position vacant and shall appoint another qualified individual to fill the position within thirty (30) days of the vacancy. The term of office of the person appointed to replace the Agent shall be for the balance of the unexpired term for the position.

5. Powers of the Authority. The Authority has responsibility for the discharge of all duties imposed by law and this Code on the Authority. In furtherance, but not in limitation of, the Authority's purposes and responsibilities, and subject to any restrictions contained in this Code or other applicable law, the Authority shall have, and is authorized to exercise the following powers and responsibilities in addition to all powers already conferred by this Code:

A. To promulgate, adopt, and enforce regulations and rules furthering the purpose and provisions of this Code; provided that such regulations shall take effect only upon approval of the Tribal Council.

B. To examine or inspect or cause to be examined or inspected each Licensee annually and more frequently if the Authority considers it necessary or advisable.

C. To make or cause to be made reasonable investigations of any Licensee or Person as it deems necessary or advisable to ensure compliance with this Code or any order of the Authority, to determine whether any Licensee or Person has engaged, is engaging or is about to engage in any act, practice or transaction that constitutes an unsafe or unsound practice or violation of this Code or any order of the Authority; or to aid in adopting rules or regulations pursuant to this Code.

D. To establish procedures designed to permit detection of any irregularities, fraud, or the like.

E. Upon prior explicit resolution and approval of the Tribal Council, to employ such advisors as it may deem necessary. Advisors may include, but are not limited to, lawyers, accountants, law enforcement specialists and financial services professionals.

F. To accept, review, approve or disapprove any Application for a License, including conducting or arranging for background investigations of all Applicants.

G. To examine under oath, either orally or in writing, in hearings or otherwise, any Licensee or Person, or agent, officer or employee of any Financial Services Licensee, or any other witness with respect to any matters related to this Code and to compel by subpoena the attendance of witnesses and the production of any books, records, and papers with respect thereto. Upon refusal to appear or produce, the Authority may apply to a court of competent jurisdiction to compel appearance or production.

H. To make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property and the books, records, papers, vouchers, accounts, documents and financial statements of any Licensee or Person engaging or participating in, or suspected to be engaging or participating in, Consumer Financial Services.

I. To discipline any Licensee or Person engaging or participating in Consumer Financial Services in violation of this Code by ordering immediate compliance, issuing

finances and sanctions, and suspending or revoking any License pursuant to the hearings and due process required by Section (d)(10) of this Code.

J. To arbitrate, compromise, negotiate or settle any dispute to which it is a party relating to the Authority's authorized activities, subject to any approval of the Tribal Council that may be required by the Tribal Council.

K. To adopt a schedule of fees to be charged for the processing, issuance and renewal of Licenses, including fees or charges associated with conducting background checks; for reasonable examinations of Licensees; and for services rendered relating to transcripts and the furnishing or certifying of copies of proceedings, files, and records and to impose the forgoing fees as applicable.

L. To establish and maintain such bank accounts as may be necessary or convenient.

M. To make such findings as may be necessary or advisable to implement the Authority's duties and powers, with such findings to be given deference as the legally binding findings of a governmental entity.

6. Investigations, Right of Entrance.

A. Investigations. The Authority, upon complaint or upon its own initiative or whenever it may deem it necessary or advisable in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any Licensee or Person engaging or suspected to be engaging in Pueblo business within its jurisdiction.

- i. In undertaking such investigations, the Authority may request the assistance of federal or local law enforcement officials, legal counsel and/or other third parties.
- ii. In conducting such investigation, the Authority shall make no order or final decisions without affording any affected party notice and a hearing pursuant to Section (d)(10) of this Code.

B. Right of Entrance. The Authority and duly authorized employees or agents of the Authority, during regular business hours, may reasonably enter upon any Pueblo premises of any Licensee, or Person engaging in or suspected to be engaging in Consumer Financial Services for the purpose of making inspections and examining the accounts, books, papers and documents of any such Licensee, or Person.

C. Aid to Entry. The staff of the Licensee, or Person engaging in or suspected to be engaging in Consumer Financial Services shall facilitate such inspection or examinations by giving every reasonable aid to the Authority and to any properly authorized officer or employee.

7. Annual Budget. The Authority shall prepare an annual operating budget for all Authority activities and present it to the Tribal Council no less than thirty (30) days prior to the commencement of each operating year or part thereof.

8. Authority Regulations.

A. Regulations necessary to carry out the implementation and orderly performance of the Authority's duties and powers shall include, but shall not be limited to, the following:

- i. The making of findings or other information required by or necessary or advisable to implement this Code;
- ii. Interpretation and application of this Code, as may be necessary or advisable to enforce the Authority's duties and exercise its powers;
- iii. A regulatory system for overseeing Consumer Financial Services, including accounting, contracting, management and supervision;
- iv. The conduct of inspections, investigations, hearings, enforcement actions and other powers of the Authority authorized by this Code; and
- v. Specification of the amount and the schedule of applicable Licensing and examination fees that shall be imposed by the Authority.

B. No regulation of the Authority shall be of any force or effect unless it is adopted by the Authority by written resolution and subsequently approved by a resolution of the Regular Tribal Council.

9. Presentations and Reports to the Tribal Council. Annually, the Authority shall present to the Tribal Council, a report summarizing the prior year's activities, any significant problems or accomplishments, reports received from each Licensee, plans for the upcoming year, and such other information as the Authority deems necessary or advisable to keep the Tribal Council fully informed as to the status of the Authority's activities. The Authority shall define by regulation, subject to the approval of the Tribal Council, the schedule for the submission of any other reports or presentations.

10. Notice and Opportunity to Cure; Due Process; Notice; Hearings; Examiner. The Authority shall provide notice and a reasonable opportunity of at least sixty (60) days to cure before it initiates any action to utilize any of its enforcement capabilities in the administration of its powers and duties hereunder absent exigent circumstances or other good cause. If the matter(s) is not satisfactorily cured within that period, the Authority shall provide notice and the opportunity for a hearing comporting with notions of due process if it is to utilize any of its enforcement capabilities in the administration of its powers and duties hereunder.

A. No Hearing, Voluntary Resolution. Whenever it shall appear to the satisfaction of the Authority that all of the interested parties involved in any dispute or concern have agreed concerning the matter at hand, the Authority may dismiss or approve resolution of the issue, as appropriate, without a hearing.

B. Notice of Hearing. The Authority shall, within ten (10) days after being advised of an event giving rise to the advisability of a hearing under this subsection, provide a written notice setting forth, with specificity, the issues to be resolved and the date and time at which a hearing shall be conducted.

C. Hearing. Except as determined by the Authority, the hearing shall be scheduled to take place no less than ten (10) and no more than thirty (30) business days after the notice of hearing is delivered, unless the Authority for good cause shown or upon its own motion determines the hearing should reasonably be postponed and rescheduled. At the hearing, the affected parties shall be provided the opportunity to present oral or written testimony to all people interested therein as determined by the Authority.

D. Examiner. The Authority's Regulatory Agent shall act as examiner for the purpose of holding any hearing, or the Agent may appoint an examiner qualified in the law or possessing knowledge or expertise in the subject matter of the hearing for the purpose of conducting any hearing. Any such appointment shall constitute a delegation to such examiner of the powers of the Authority under this Code with respect to any such hearing.

E. Decision. The Authority shall issue a written decision to all affected parties within thirty (30) days after the hearing.

F. Appeals. Affected parties may appeal an Authority determination by filing a written appeal to the Tribal Court, along with filing fees, in accordance with Subpart G-10 of the Pueblo of Pojoaque Law and Order Code within twenty (20) days of receiving the Authority's final written decision in accordance with (j)(3)(D) of this Code.

(e) Licenses.

1. Applicability. Any Person seeking to engage in Consumer Financial Services subject to this Code, a Vendor Licensee, or, when applicable, any Person employed by a Financial Services Licensee shall apply for and receive all required licenses prior to engaging in Consumer Financial Services, providing services to a Financial Services Licensee, or being employed by a Financial Services Licensee.

A. A person who engages in Consumer Financial Services without charging or collecting interest or other consideration for a transaction or charges or collects nominal or incidental consideration is not required to obtain a Licensee to engage in Consumer Financial Services, but is required to otherwise comply with the provisions of the Code.

2. Application Procedure.

A. Submission to Authority. An Applicant seeking a License shall submit an Application to the Authority on such form as the Authority may require.

B. Application Contents. At a minimum, the Application shall contain the following information:

- i. For Applicants that are other than natural persons, each of the Applicant's owners, officers and/or directors; and principal management employees, including any chief executive officer, chief financial officer, chief operating officer, and general manager;
- ii. Each of its owners or partners, if an unincorporated business;
- iii. Each of its shareholders who own more than ten percent (10%) of the shares of the corporation;
- iv. For each person listed in Sections (e)1 above, and for all Applicants that are natural persons, an Application for a Financial Services License, an Application for a Vendor License, or Employee License shall include each person's criminal and civil record, if any, and an explanation of any crimes for which he has been convicted or civil suits in which a judgment has been entered against him or to which he has entered a plea of no contest in any jurisdiction and a complete disclosure of any pending or anticipated civil or criminal action in any jurisdiction against the Applicant. The Applicant shall provide written permission giving the Authority or its designees the right to the Applicant's background, including his criminal record;
- v. An Applicant for an Employee License shall provide all necessary information and written permission for the Authority or its designee to obtain the Applicant's credit history and/or credit score;
- vi. A list of all Consumer Financial Services-related licenses the Applicant has ever applied to the Authority for, whether or not such licenses were issued;
- vii. The disclosure of whether there is a previous contractual relationship with an Indian Pueblo; and
- viii. A sworn statement that if the License applied for is issued, the Applicant will submit to the jurisdiction of the Pueblo; the Applicant will abide by all applicable Pueblo and Federal laws, regulations and policies; and the information contained in the Application is true and correct to the best of Applicant's knowledge.
- ix. Each Application shall be accompanied by an application fee, the amount of which shall be set by the Authority.

3. Review, Issuance and Denial, Term.

A. Consumer Financial Services License. A Consumer Financial Services License shall automatically issue if the following criteria are met:

- i. The Applicant complied with the provisions of Section (e)(2);
- ii. No owner, partner, officer and/or director; or principal management employee of the Applicant or a shareholder who owns more than ten percent (10%) of the shares of Applicant has been, in any jurisdiction, convicted of a felony or any other crime involving breach of trust or dishonesty in the last ten (10) years from the date of application; been convicted or entered a plea of no contest of any felony or any other crime involving breach of trust or dishonesty in the last ten (10) years from the date of application; had an order entered against it by an administrative agency based on conduct that involved fraud, deceit or misrepresentation by the Applicant; or had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation;
- iii. The Consumer Financial Services are authorized pursuant to this Code;
- iv. The Consumer Financial Services are authorized by a Tribal Council Resolution; and
- v. The Pueblo has the sole ownership interest in the Pueblo's enterprise that provides the Consumer Financial Services.

B. Employee License. Upon compliance with Section (e)(2), the Authority shall review the qualifications of the Applicant sufficient to make a determination of eligibility as required under this Code.

C. Issuance. Upon completion of any necessary background investigation, the Authority may issue a License on a conditional or unconditional basis. The Authority shall have the final word on whether to license an Applicant. Nothing herein creates a property right in the License. The Authority may in its discretion grant a temporary License after submission of a completed application and a preliminary determination of suitability by the Authority.

D. Denial. The Authority, when it does not license an Applicant shall notify the Applicant in writing, provide the basis for the denial of the License, and otherwise comply with the procedural requirements of Section (d)(10) of this Code.

E. Term. Any License issued pursuant to this section shall be effective for a period of two (2) years from the date of issuance. A temporary License may be for such period of time as determined by the Authority, but not to exceed sixty (60) days, with a possible sixty-(60)-day renewal for cause.

F. License Substance and Classification. The License shall bear on its face the name of the Licensee, the Pueblo's logo, the issue date, the license number, and the applicable classification of the License. Subject to this Code, the Authority may issue Licenses that authorize a Licensee to provide all types of Consumer Financial Services under this Code or a limited-purpose License that only authorizes certain types of Consumer Financial Services under this Code. Each License shall specify its scope.

i. Record Retention. The Authority shall maintain the Applicant's file, including applications, background investigation reports, and eligibility determination reports for no less than three (3) years from the date of termination of employment.

4. License Denial, Suspension or Revocation of License.

A. Denial; Temporary Suspension or Revocation. The Authority shall not unreasonably withhold issuance or renewal of a License. The Authority shall deny a License or suspend or revoke a License, after notice and an opportunity for a hearing pursuant to Section (d)(10) herein, if the Authority finds that an Applicant or Licensee:

- i. Failed to pay initial Application or renewal fees;
- ii. Made a material misstatement or omission on the Application or on any document required to be filed with the Authority;
- iii. Withheld or provided incomplete or insufficient pertinent information;
- iv. Is not a Person of honesty, truthfulness or good character;
- v. Violated or aided, abetted, or conspired with another Licensee or Person or knowingly caused any Licensee or Person to or otherwise participated in violation of this Code or the rules and regulations of the Authority;
- vi. Participated in Consumer Financial Services that was not authorized by this Code;
- vii. Knowingly falsified books or records that relate to a transaction connected with the operation of Consumer Financial Services;
- viii. Failed to keep sufficient books and records to substantiate receipts, disbursements, and expenses incurred or paid by a Licensee authorized pursuant to this Code or to substantiate, by the Authority, compliance with this Code;
- ix. Failed to take reasonable measures to ensure that an agreement with a consumer is not materially breached;

- x. Is insolvent;
- xi. Is charged in any jurisdiction with a felony or any other crime involving breach of trust or dishonesty, so long as any temporary suspension is removed if the charges are subsequently dismissed;
- xii. Has been convicted or has entered a plea of no contest in any jurisdiction of any felony or any other crime involving breach of trust or dishonesty;
- xiii. Has had an order entered against it by an administrative agency of any jurisdiction and the order is based on conduct that involved fraud, deceit or misrepresentation by the Applicant or Licensee and it entered after notice and an opportunity to be heard;
- xiv. When the Licensee is a Licensee or Licensee Applicant, has had a financial judgment ordered against it in a civil action based on fraud, deceit or misrepresentation;
- xv. Employed any Person in a Consumer Financial Services business whom the Licensee knew or should have known was convicted of fraud, theft, or embezzlement;
- xvi. Refused to comply with any lawful order, inquiry or directive of the Authority or the Tribal Council;
- xvii. Attempted to bribe or offer something of value to any Person, Tribal Council member, or a Commissioner in an attempt to avoid or circumvent Pueblo law;
- xviii. Stole or attempted to steal funds or other items of value from the Authority or the Pueblo;
- xix. Poses a threat to the public interest or the effective regulation of Consumer Financial Services;
- xx. Creates or enhances the danger of unsuitable, unfair or illegal practices and methods and activities in the conduct of Consumer Financial Services;
- xxi. Was a former Licensee pursuant to this Code whose License was suspended or revoked and not subsequently reinstated; or
- xxii. Has demonstrated an inability to manage the Applicant's personal or business finances or demonstrates a sufficient indebtedness in relation to income so as to cause concern for the Applicant's ability to fulfill its responsibilities under this Code.

B. Acts of Controlling Persons. It is sufficient cause for denial, suspension or revocation of a License if an officer, director, partner, employee or controlling person of the Licensee or Applicant acted or failed to act in a manner that if the Licensee or Applicant acted or failed to act in that manner would be cause for denial, suspension or revocation of the License. For purposes of this Subsection, “controlling person” means a person who owns more than twenty-five percent (25%) equity interest in the Licensee or who has the ability to affect one or more significant business decisions of the Licensee or Applicant.

C. Procedure for Suspension or Revocation.

- i. Upon reasonable basis for belief that a violation of the Code has occurred, the Authority or its designee may either undertake an investigation of the Licensee, or serve upon such Licensee an order to show cause why the Licensee's License should not be suspended or revoked, or why the Licensee should not be enjoined from conducting Consumer Financial Services under this Code.
- ii. Such notice shall state the reason for the suspension and/or order, and the time and place for the hearing before the Authority pursuant to Section (d)(10) herein.
- iii. The Licensee shall have an opportunity to present testimony and cross-examine opposing witnesses, and to present any other evidence as to why a suspension, revocation order or injunction should not be issued.
- iv. The hearing shall be governed in all respects in accordance with Pueblo law and Authority regulations. Any suspension or revocation decision of the Authority after hearing may be appealed in accordance with the provisions of Section (d)(10).

5. Renewal.

A. Renewals. A Licensee shall petition to have the License renewed by applying to the Authority for a renewal before the License expires. Applicants may be required to provide updated material as requested.

B. Non-Renewal. The Authority may deny renewal of a License or suspend or revoke a License if the Authority finds the existence of any circumstance listed in Section (e)(4)(A) above, or that any other fact or condition exists that, if it had existed at the time of the original application for the License, would have warranted the Authority to refuse to issue the License.

6. Voluntary Surrender of License. Any Licensee registered pursuant to this Code may voluntarily surrender its License at any time by giving written notice of the surrender to the Authority.

7. Assignment or Transfer. A License is not salable, lendable, transferable or assignable and control of a License shall not be acquired through any stock purchase or other devise without the prior written consent of the Authority. The Authority shall not give consent if the Authority finds that the acquiring Person does not meet the qualifications described in this Code. For the purposes of this Subsection, “control” means the power to vote more than twenty-five percent (25%) of the outstanding voting shares of a licensed corporation, partnership, association or trust.

8. Deposits of Fees and Assessments. Application fees, renewal fees, late payment penalties, civil penalties, administrative fines and other fees or penalties provided for in this Code shall in all cases be paid directly to the Authority. The Authority shall deposit such proceeds into an account or fund designated by the Tribal Council.

(f) Exemptions. The following Persons are subject to Sections (g)(1) and (g)(2) but otherwise exempt from any other provision or application of this Regulatory Code:

1. Any Person providing products or services in support of a Financial Services Licensee business not provided directly to the Financial Services Licensee;
2. Any national or state chartered bank that is insured by the Federal Deposit Insurance Corporation or any subsidiary thereof;
3. Any Person licensed or otherwise authorized to engage in payment processing, money transmission, tax preparation, or the practice of law;
4. Any credit bureau or similar third-party service provider or vendor engaged by a Licensee for purposes of risk assessment or similar pre-origination services.
5. Any other federal insured financial institution and any of their subsidiaries; any employee of the above.

(g) Licensees.

1. Compliance. Licensees shall at all times comply with the provisions of this Code, rules and regulations promulgated pursuant to this Code, and all other Pueblo and federal laws as applicable.

2. Federal Consumer Protection Laws. A Licensee shall conduct business in a manner consistent with the spirit of federal consumer protection law, including, without limitation, the following, as applicable: Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§ 5491-5493; Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and related regulations at 12 C.F.R. Part 226; Consumer Leasing Act, 15 U.S.C. §§ 1667 *et seq.*, and related regulations at 12 C.F.R. Part 213; Fair Credit Billing Act, 15 U.S.C. § 1666a; Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, and related regulations at 15 C.F.R. Part 202; Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.*, and related regulations at 12 C.F.R. Part 205; Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* and related regulations

at 12 C.F.R. Part 222); privacy provisions of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 *et seq.*, and related regulations at 16 C.F.R. Part 313 and 16 C.F.R. Part 314; Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, and related regulations at 16 C.F.R. Part 901; Talent Amendment, 10 U.S.C § 987, and related regulations of the Department of Defense at 32 C.F.R. part 232; and Servicemembers' Civil Relief Act, 50 U.S.C. App. §§ 501-596.

3. Prohibited Acts by Licensees.

A. A Person shall not engage in the business of Consumer Financial Services subject to this Code without first obtaining a License pursuant to this Code. A separate License is not required for each location that the Licensee operates and deals in person with the consumers, but each location must be approved in advance by the Authority. The Financial Services shall post its License issued pursuant to this Code at the each location or, if the location is a website, said License shall be posted electronically on each website. For purposes of this Section (f)(2), the term "location" or "a location" includes a website maintained for the purpose of participating in Consumer Financial Services pursuant to this Code.

B. A Financial Services Licensee shall not:

- i. Engage in any financial services other than those allowed under this Code.
- ii. Assess any interest, fee, or charge fee that is greater than any applicable limitation, if any, prescribed in this Code.
- iii. Use or cause to be published or disseminated any advertisement that contains false, misleading or deceptive statements or representations.
- iv. Engage in unfair, deceptive or fraudulent practices.
- v. Tie or otherwise condition the providing of Consumer Financial Services to the sale of any good or service by the Licensee.

4. Minimum Internal Control Systems. Each Financial Services Licensee shall maintain a system of minimum internal controls systems regulation as may be promulgated by the Authority.

A. Internal control systems regulation shall be submitted to Licensee for review and comment prior to implementation.

5. Books, Accounts and Records, Examinations, Costs.

A. A Financial Services Licensee shall maintain at each location at which it conducts business all books, accounts and records that the Authority reasonably requires. Each Financial Services License shall:

- i. Ensure that the books, accounts and records are sufficiently detailed to comply with the Code and all applicable Pueblo and federal laws.
- ii. Maintain the books, accounts and records separately from any other business in which the Licensee is engaged and shall retain the books, accounts and records for at least three years.

B. The Authority may examine or cause to be examined each Financial Services Licensee annually. In conducting such examination, the Authority or its agent may examine the books, accounts and records to determine if the Financial Services Licensee has complied with this Code and any implementing regulations adopted pursuant to this Code. The Financial Services Licensee shall pay the cost of the examination as may be required by the Authority in accordance with its regulations.

6. Reports.

A. Annual Reports. Every Financial Services Licensee shall file an annual report with the Authority in a time and manner specified by the Authority. Each report shall contain information specified by the Authority sufficient for the Authority to determine compliance with this Code including, at a minimum, the following:

- i. The name, address and telephone number of the Licensee;
- ii. The names, addresses and titles of all of the current managers of the Licensee;
- iii. A sworn statement that the Licensee, to the best of its knowledge, has complied and will continue to comply with all Pueblo and federal laws applicable to Consumer Financial Services; and
- iv. The name and address of the agent who will accept service of process on behalf of the Licensee.

7. Audit Requirements. Each Financial Services Licensee shall provide to the Authority annually a copy their financial statements which may be audited or unaudited.

8. Public Notice. Each Financial Services Licensee shall have a copy of this Code and any implementing regulations readily available for inspection by any person at each authorized Consumer Financial Services site.

(h) Authorized Consumer Financial Services Transactions.

1. General Authority. Subject to this Code, a Financial Services Licensee may engage in the business of providing Consumer Financial Services as provided in this Code.

2. General Terms, Conditions, and Practices.

A. Preservation of Tribal Sovereign Immunity and Exclusive Jurisdiction. The consumer must be provided a notice in a form approved by the Authority regarding preservation of tribal sovereign immunity of the Pueblo and of the Authority and exclusive jurisdiction of the Pueblo of Pojoaque Tribal Court and appeals thereto and a consumer's limited and exclusive rights to submit complaints to a tribal dispute resolution process in accordance with this Code and regulations of the Authority.

B. Definitions. As used in this Section:

- i. "Business day" means, with respect to the Right of Rescission under Section (h)(2)(B)(vii), all calendar days except Sundays and legal public holidays.
- ii. "Closed end credit" means the extension of credit by a Lender to a consumer pursuant to an arrangement or agreement which is not a revolving credit plan.
- iii. "Conspicuously displayed" means highlighted through the use of capitalization, bold print, underlining or some combination thereof.
- iv. "Installment loan" means a loan between one thousand dollars (\$1,000) and twenty-five thousand dollars (\$25,000) made to an individual consumer that charges interest and/or fees for which the stated repayment period is greater than sixty (60) days but no longer than five (5) years and is not secured by title to a motor vehicle.
- v. "Lender" means a Financial Services Licensee as defined in Subpart R-2(b). In addition, all on-line lenders shall be a commercial entity formed pursuant to Pueblo law to provide essential government revenue and wholly-owned by the Pueblo to serve the interest of the Pueblo and its members.
- vi. "Loan" means any extension of closed end credit in connection with a Consumer Financial Services transaction.
- vii. "Right of Rescission" means, with respect to any short-term consumer loan or installment loan, the right to return any amount borrowed, in full, on or before the close of business of the business day following the day on which such sum has been disbursed or advanced without the incursion of any fee or other charges.
- viii. "Rollover" means, with respect to any short-term consumer loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.
- ix. "Short-term consumer loan" means a loan of two thousand dollars (\$2,000) or less made to an individual consumer that charges interest and/or fees for which

the stated repayment period is less than sixty (60) days if a "payday" product, and less than two (2) years if an Installment loan and is not secured by title to a motor vehicle.

- x. "Workout agreement" means an agreement between an individual consumer and a Lender for the repayment of an outstanding and unpaid indebtedness which requires a net reduction of not less than ten percent (10%) of such indebtedness per payment period.

C. Extension of Credit. Any Lender may, subject to any limitations on lending authority or otherwise imposed by law and subject to the other provisions of this Section, offer and extend closed end credit to a consumer and, in connection therewith, may charge and collect the interest and other charges permitted by this subpart and may take such security as collateral in connection therewith as may be acceptable to the Lender.

D. Interest. A Lender may charge and collect interest in respect of a loan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing the loan provides or as established in the manner provided in such agreement and may calculate such interest by way of simple interest or such other method as the agreement governing the loan provides. If the interest is precomputed it may be calculated on the assumption that all scheduled payments will be made when due. For purposes hereof, a year may but need not be a calendar year and may be such period of from three hundred and sixty (360) to three hundred and sixty-six (366) days, including or disregarding leap year, as the Lender may determine.

E. Variable Rates. If the agreement governing the loan so provides, the periodic percentage rate or rates of interest charged and collected in respect of the loan may, if the interest is not precomputed and taken in advance, vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of outstanding unpaid amounts of such loan on and after the effective date of such variation. This section shall not be construed to limit the authority of a Lender to charge and collect interest in respect of a loan in the manner and at the rate or rates authorized in any other section of this subpart. Without limitation, a permissible schedule or formula hereunder may include provisions in the agreement governing the loan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid amounts whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the loan agreement, which event or circumstance may include the failure of the consumer to perform in accordance with the terms of the loan agreement.

F. Additional Charges. In addition to or in lieu of interest at a periodic percentage rate or rates permitted by Sections (h)(2)(E) and (h)(2)(F), the Lender may charge and collect, in respect of a loan:

- i. If the agreement governing the Loan so provides, charge and collect any other fees or charges, costs, points, premiums and all other expenses which may be assessed by the Lender in connection with the Loan.
- ii. If the agreement governing a Loan so provides, a Lender may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the loan agreement which are in default; provided, however, that no more than one (1) such delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default. Nothing contained in this subdivision shall limit, restrict or otherwise affect the right of a Lender under and pursuant to Section (h)(2)(E) this title to change the periodic percentage rate or rates of interest applicable to the loan agreement between the Lender and a consumer upon the occurrence of a delinquency or default or other failure of the consumer to perform in accordance with the terms of the loan agreement;
- iii. Such other charges as are set forth in the Agreement governing the loan including, but not limited to, costs, fees, services, points, premiums and all other reasonable expenses which may be incurred by such applicant in connection with a loan. No Lender shall demand, collect or receive from any applicant for a loan, directly or indirectly, any other charges, or any greater amounts for any authorized charges than those permitted by this subpart.

G. Deferred Installments. A Lender may at any time or from time to time permit a consumer to defer installment payments of a loan and may, in connection with such deferral, charge and collect deferral charges.

H. Refinancing.

- i. A consumer may, with the consent of the Lender, refinance the entire outstanding and unpaid amount of a loan, and the Lender may charge and collect a refinancing charge in connection with any such refinancing.
- ii. For the purposes of this section, the entire outstanding and unpaid amount of a loan shall be deemed to be the total of the unpaid balance and the accrued and unpaid interest and charges on the date of refinancing.

I. Short-Term Consumer Loans and Installment Loans.

- i. In addition to such other limitations and requirements as are imposed pursuant to other provisions of this subpart, short-term consumer loans and installment loans shall be subject to the following:
 - a. No Lender shall make more than six (6) rollovers of an existing short-term consumer loan, provided however, this section does not apply to a disclosed payment schedule of an Installment loan that may provide for interest only payments per the terms of the consumer agreement. A Lender may, following not more than the maximum allowable number of rollovers, enter into a workout agreement with the consumer or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.
 - b. No Lender shall make a short-term consumer loan unless such loan is subject to a right of rescission on the part of the individual consumer.
 - c. No Lender shall pursue or threaten to pursue criminal action against an individual consumer in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction.
- ii. In addition to such other disclosure requirements as are imposed pursuant to other provisions of this subpart, short-term consumer loans and installment loans shall be subject to the following: No Lender shall make a short-term consumer loan or an Installment loan unless the application for such loan contains a written disclosure, conspicuously displayed, that:
 - a. The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems;
 - b. Additional fees and interest may accrue if the loan is rolled over or refinanced; and
 - c. Credit counseling services are available to consumers who are experiencing financial problems.
- iii. Nothing in this section prohibits a Lender from refinancing the principal amount of a short-term consumer loan or an installment loan, subject to the limitations and requirements imposed herein.
- iv. Every Lender must post on any website a prominent statement that: “This loan is not intended to meet long-term financial needs.”

J. Attorney’s Fees; Costs. In the event a consumer defaults under the terms of a loan, the Lender may, if the consumer’s account is referred to an attorney (not a regularly salaried employee of the Lender) or to a third party for collection and if the agreement governing, or the bond, note or other evidence of, the loan so provides, charge and

collect from the consumer a reasonable attorney's fee. In addition, following a consumer's default, the Lender may, if the agreement governing, or the bond, note or other evidence of, the loan so provides, recover from the consumer all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by the Lender.

K. Application of Other Laws. Any federal law not applicable to Indian Pueblos or state law limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit under a Loan operated in accordance with this subpart.

L. No Oral Agreements. A Consumer Financial Services transaction may provide that it represents the entire agreement of the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. Such provisions are enforceable and disallow evidence of oral agreements.

M. Enforcement of Licensee's Rights and Remedies. In any proceeding in which a Licensee is a party in interest with respect to any transactions with a consumer, the Licensee's rights and remedies shall be granted based upon prima facie proof and entitlement based upon the terms of the written transaction documents and the payment and business records maintained by the Licensee in the ordinary course of business.

(i) Enforcement.

1. Jurisdiction. Except as provided otherwise in this Code, the Authority shall have jurisdiction over all violations of this Code.

2. Guidelines. In imposing any administrative remedy or civil penalty provided for in this Code, the Authority shall take into account the appropriateness of the remedy or penalty with respect to the size of the financial resources and good faith of the Financial Services Licensee charged, the extent to which the violation was intentional, the gravity of the violation, the history or previous violations, and such other matters as justice may require.

3. Civil Violations. Any Financial Services Licensee who violates or fails to comply with any provision of this Code or who fails or neglects to comply with any final order of the Authority may be charged with a violation and given due process pursuant to Section (d)(10) herein. If the Licensee or Person is found to have committed a violation, he/it may be required to pay a civil fine to the Authority not to exceed five thousand dollars (\$5,000) for each violation. Each day during which any such violation or failure to comply continues may be treated as a separate violation of this Code, but not to exceed one hundred thousand dollars (\$100,000). A violation or series of violations related to the same act or omission may be treated as one violation.

- A. A Financial Services Licensee, or Employee Licensee found responsible for a material violation pursuant to this Section may also be subject to revocation of the Licensee's License.
- B. An officer or agent of a business entity who knowingly or recklessly participates in a material violation of this Code may be subject to termination by the Authority.
4. Cumulative Fines. All civil fines accruing under this Code shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, or judgment, penalty, forfeiture or damages nor bar the power of a court of competent jurisdiction to enter an order of contempt, nor bar any criminal prosecution against any officer, director, agent, or employee of any Licensee, or any other Person.
5. Purpose of Civil Penalties. The civil fines imposed under this Code are intended to be remedial and not punitive and are designed to compensate the Pueblo for the damage done to the peace, security, economy and general welfare of the Pueblo, and to compensate the Pueblo for costs incurred by the Pueblo in enforcing this Code. The civil fines under this Code are also intended to coerce all people into complying with this Code and Authority regulations and not to punish such people for violation of such laws and regulations.
6. Civil Action for Penalties. In enforcing the civil infraction provisions of this Code, the Authority may proceed, in the name of the Pueblo against a Person for violation of such provision by civil complaint in a court of competent jurisdiction pursuant to the provisions of this Code.
7. Seizure and Forfeiture of Property. Property utilized in violation of this Code shall be subject to seizure and forfeiture by order of the Authority pursuant to such implementing regulations as the Authority shall promulgate.
- (j) Resolving Borrower Disputes.
1. General Principles. The Pueblo values its customers and intends, at all times, to see that questions, concerns, issues, and/or disputes raised by consumer borrowers are addressed in a fair and orderly manner. However, nothing in this Section shall be construed as a waiver of the sovereign immunity of the Pueblo or of the Authority or any of the rights and privileges attendant thereto.
2. Initial Dispute Resolution Procedure.
- A. Consumers who, in the course of their otherwise lawful and proper use of a Licensee's business, have concerns about the operation of any part of the Licensee's operation that pertain to the borrower or who otherwise believe themselves to be aggrieved by some aspect of the operation of any part of the Licensee's business, shall direct their concerns or dispute in the first instance to the management of the Licensee, either orally or in writing.

B. Upon learning about a dispute, a Licensee shall notify the consumer of his or her right to contact the Authority about the dispute and his or her rights to pursue formal dispute resolution under Section (j)(3). The Licensee shall also expediently gather sufficient facts to make a determination about the dispute. The Licensee shall inform the complainant, either orally or in writing, about its initial determination as soon as is reasonably practicable.

C. Payment and servicing disputes from a consumer regarding the conduct of a Financial Services Licensee are also subject to the terms and conditions of the consumer loan agreement entered by and between the parties, which may provide alternative means of dispute resolution for certain terms of individual consumer loan agreements. However, to the extent a consumer's complaint deals with compliance with this Code, the Authority shall have exclusive jurisdiction.

3. Formal Dispute Resolution Procedure.

A. Complainants who have followed the initial dispute resolution procedure described in Section (j)(2) and who are dissatisfied with a Licensee's initial determination, may request review of the initial determination by the Licensee by submitting a request to the Authority in writing no later than ten (10) days after being informed about the initial determination by the Licensee.

B. In reviewing a dispute, the Authority may rely upon the record created by the Licensee or may perform its own investigation if it finds the record inadequate to make a determination. The Authority shall offer the complainant a fair opportunity to be heard regarding the dispute, in person or through telephonic conference, either before or after the Authority makes its own inquiries. A complainant may be represented by legal counsel at the complainant's own expense. The complainant's opportunity to be heard, if granted, shall take place no less than ten (10) days and no more than sixty (60) days after the Authority receives the complainant's written request. In connection with a dispute, the Authority may conduct and issue such review, interviews, sworn statements, depositions, and other discovery as the Authority requests. In each instance, the Licensee, complainant and other interested persons must cooperate with the Authority and provide such information and documents as the Authority deems necessary or advisable to make a determination.

C. After reviewing and/or investigating (as the Authority finds necessary per (j)(3)(B) above), and within thirty (30) days after affording the complainant an opportunity to be heard (if the complainant chooses), the Authority shall make a written decision on the complainant's written request for review, and shall mail a copy of the opinion to the complainant at his/her last known address. The Authority may grant or deny a consumer complaint and grant or deny such relief, if any, as the Authority determines in its sovereign discretion; provided no monetary relief in excess of one thousand dollars (\$1,000) may be granted by the Authority without the express approval of the Tribal Council. The opinion shall inform the complainant that he or she may appeal the Authority's decision as set forth in this Section.

D. A complainant may appeal an Authority opinion by filing a written Petition with the Tribal Court, along with any filing fees, in accordance with Subpart G-10 of the Pueblo of Pojoaque Law and Order Code within twenty (20) days of receiving the Authority's final written decision.

E. The tribal dispute resolution process authorized under this Code is considered by the Pueblo to constitute a petition for redress submitted to a sovereign government, without waiver of sovereign immunity or exclusive jurisdiction, and does not create any binding procedural or substantive rights for a complainant. Any determination by or on behalf of the Pueblo, whether procedural or substantive, shall be made by the Pueblo in its sovereign discretion.

R-3 Professional Athletic Competition Code

(a) Definitions.

1. "Athletic and sporting activity or competition" includes only those events occurring on Pueblo lands and conducted primarily for commercial purposes and for the purpose of generating income to the Pueblo of Pojoaque, promoters, participants, and others.
2. "Commission" or "PPAC" means the Pueblo of Pojoaque Athletic Commission;
3. "Contestant" means a person who engages in unarmed combat for remuneration;
4. "Council" or "Tribal Council" means the governing body of the Pueblo of Pojoaque which is responsible for passing resolutions, setting policy and making decisions;
5. "Foreign co-promoter" means a promoter who has no place of business in New Mexico;
6. "Manager" means:
 - A. a person who:
 - i. undertakes to represent the interests of another person by contract, agreement or other arrangement in procuring, arranging or conducting a professional contest or exhibition in which the represented person will participate as a contestant;
 - ii. directs or controls the activities of an unarmed combatant relating to the participation of the unarmed combatant in professional contests or exhibitions;
 - iii. receives or is entitled to receive at least ten percent of the gross purse or gross income of any professional unarmed combatant for services relating to the participation of the unarmed combatant in a professional contest or exhibition;
or

iv. receives compensation for services as an agent or representative of an unarmed combatant; and

B. does not include a licensed attorney if the attorney's participation in any of the activities described in Paragraph (A) of this Subsection is limited solely to the legal representation of a client who is an unarmed combatant;

7. "Professional boxer" or "professional wrestler" means an individual who competes for money, prizes or purses or who teaches, pursues or assists in the practice of boxing, wrestling or martial arts as a means of obtaining a livelihood or pecuniary gain;

8. "Professional contest" means any professional boxing, wrestling or martial arts contest or exhibition, whether or not an admission fee is charged for admission of the public;

9. "Promoter" means any person, and in the case of a corporate promoter includes any officer, director or stockholder of the corporation, who produces or stages any professional boxing, wrestling or martial arts contest, exhibition or closed circuit television show;

10. "Purse" means the financial guarantee or any other remuneration, or part thereof, for which professional boxers or professional wrestlers are participating in a contest or exhibition and includes the participant's share of any payment received for radio broadcasting, television or motion picture rights;

11. "Ring official" means any person who performs an official function during the progress of a contest or exhibition;

12. "Unarmed combat" means boxing, wrestling, martial arts or any form of competition in which a blow is usually struck that may reasonably be expected to inflict injury; and

13. "Unarmed combatant" means:

A. a person who engages in unarmed combat in a contest or exhibition, whether or not the person receives remuneration, including a wrestler, boxer, mixed martial artist or other contestant; or

B. an amateur boxer who is registered with United States amateur boxing, incorporated, or any other amateur organization recognized by the Commission and participates in an amateur boxing contest or exhibition in a state that is registered and sanctioned by United States amateur boxing, incorporated or golden gloves of America.

(b) Commission Created; Purpose; Authorities and Restrictions. There is created the "Pueblo of Pojoaque Athletic Commission," a governmental regulatory subdivision of the Pueblo of Pojoaque.

1. Purpose. The purpose of the Commission is to regulate the conduct of each athletic and sporting activity or competition that is authorized by the Tribal Council to be conducted.

The PPAC shall be responsible for the regulation and licensure of any athletic and sporting activity or competition which occurs on Pueblo of Pojoaque lands to ensure that the conduct of such activity comports with all Athletic Commission Rules and Regulations and laws of the Pueblo of Pojoaque.

2. Location and Place of Business. The PPAC may maintain its principal place of business and office within the Pueblo's government offices, or as otherwise may be determined by the Commission to be in the best interest of the Pueblo.

3. Duration. The Commission shall have perpetual existence and succession in its own name, unless dissolved by the Tribal Council pursuant to the laws of the Pueblo.

4. Attributes. As a governmental subdivision of the Pueblo, the Commission is under the direction and control of the Council, and it is the purpose and intent of the Council that the operations of the Commission be conducted on behalf of the Pueblo for the sole benefit and interests of the Pueblo, its members and residents of and visitors to the Pueblo's jurisdictional land.

A. Arm of the Pueblo. In carrying out its purposes under this Resolution, the Commission shall function as an arm of the Pueblo.

B. Pueblo Actions. Notwithstanding any authority delegated to the Commission, the Pueblo reserves to itself the right to bring suit against any person or entity in its own right, on behalf of the Pueblo or on behalf of the Commission whenever the Pueblo deems it necessary to protect the sovereignty, rights and interests of the Pueblo or the Commission.

C. Privileges and Immunities of the Pueblo. The Commission shall possess all of the privileges and immunities of the Pueblo.

D. Privileges and Immunities for Tax Purposes. The Commission and its assets and activities shall have the same privileges and immunities from federal, state, and local government taxation as the Pueblo and its assets and activities. As a political subdivision of an Indian tribal government, the Commission shares the same tax status as the Pueblo for federal, state and local tax purposes.

5. Sovereign Immunity of the Pueblo of Pojoaque Athletic Commission.

A. Immunity from Suit. The Commission shall possess all the privileges and immunities of the Pueblo and its assets, except as otherwise specifically limited by Tribal Council, including sovereign immunity from suit in any tribal, federal or state court.

B. Waiver of Sovereign Immunity of the Commission. Sovereign immunity of the Commission may be waived only by express resolution of the Tribal Council.

- i. Resolution Effecting Waiver. All waivers of sovereign immunity must be in written Tribal Council resolutions of continuing force and effect issued by the Tribal Council.
- ii. Policy on Waiver. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Commission or the Pueblo.
- iii. Limited Nature of Waiver. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the Commission subject thereto, and the court having jurisdiction pursuant thereto and law applicable thereto.

6. Assets of the Commission. The Commission shall have only those assets specifically assigned to it by the Council, acquired in its name by the Pueblo, or acquired by the Commission on its own behalf. No activity of the Commission or any indebtedness incurred by it shall implicate or in any way involve any assets of tribal members or the Pueblo not assigned in writing to the Commission.

7. Authorized Athletic and Sporting Activities or Competitions.

A. Only those sporting activities expressly authorized and regulated by the Commission, or as may be authorized from time to time by the Council, shall be conducted on the Pueblo. Any sporting activity conducted in violation of this Resolution shall be subject to prosecution or civil forfeiture of sales and other revenues generated by such event.

B. The Commission shall permit and shall regulate only those athletic and sporting activities or competitions specifically authorized by the Council and as permitted by applicable law. The following sporting activities are authorized by the Tribal Council:

- i. Boxing, amateur and professional;
- ii. Wrestling, amateur and professional; and
- iii. Mixed martial arts (MMA), amateur and professional.

(c) Establishment; Qualifications; Removal; Budget.

1. Establishment of the Pueblo of Pojoaque Athletic Commission. The Council shall appoint the members of the PPAC for terms of two (2) years each, or until resignation, removal, or until the Council re-appoints members or appoints their replacements. The PPAC shall consist of five members appointed by the Council at its discretion.

2. Commission Qualifications; Removal from Office. Commission members may be removed by the Council, at the will of the Council. Members shall not be involved in the promotion of sporting activities on Pueblo of Pojoaque lands during their term of office.

3. Budget; Staff. It is expected that the Commission shall be self-supporting, either through the assessment of licensing fees or the assessment of other charges against athletic and sporting activities or competitions regulated by the Commission. The Commission may hire staff as necessary and appropriate, and as the Commission's budget permits. Any staff shall be employees of the Pueblo of Pojoaque, subject to the Pueblo's personnel policies.

4. The Commission may adopt rules and regulations for the administration of this Code not otherwise inconsistent with the laws of the Pueblo of Pojoaque or applicable federal law. All rules and regulations shall be kept on file at the Commission offices and provided to the public upon request. The rules and regulations shall include, but not be limited, to the:

A. number and qualifications of ring officials required in a professional contest;

B. powers, duties and compensation of ring officials; and

C. qualifications of licensees.

5. The Commission shall prepare all forms of contracts between sponsors, licensees, promoters and contestants.

(d) Jurisdiction of Commission Over Professional Contests. The Commission shall have sole direction, management, control and jurisdiction over all professional contests to be conducted, held or given within the Pueblo of Pojoaque, and no professional contest shall be conducted, held or given within the exterior boundaries of the Pueblo except in accordance with this Code and the laws of the Pueblo of Pojoaque.

(e) Jurisdiction of Commission Over Unarmed Combat Contests.

1. The PPAC shall have sole direction, management, control and jurisdiction over all contests or exhibitions of unarmed combat to be conducted, held or given within the Pueblo of Pojoaque, and no contest or exhibition may be conducted, held or given within the Pueblo except in accordance with the provisions of this Code and the laws of the Pueblo of Pojoaque.

2. Any contest involving a form of Oriental unarmed self-defense must be conducted pursuant to rules for that form that are approved by the Commission before the contest is conducted, held or given in the Pueblo.

(f) Licenses to Conduct Professional Contests.

1. The Commission may issue licenses to conduct, hold or give a professional contest to any promoter under such terms and in accordance with such rules as the Commission may adopt.
2. Any application for such a license shall be in writing and shall correctly show the promoter. The application shall be accompanied by the annual fee prescribed by law.
3. Before any license is granted to a promoter, the promoter must file a bond in an amount fixed by the Commission with good and sufficient surety and conditioned for the faithful performance by the promoter of the provisions of this Code.

(g) Licenses for promoters, boxers, wrestlers, trainers, ring officials and others.

1. All promoters, foreign co-promoters, matchmakers, professional boxers, professional wrestlers, managers, seconds, announcers, referees, trainers, booking agents and timekeepers shall be licensed by the Commission.
2. No person shall be permitted to participate, either directly or indirectly, in any professional contest unless such person shall have first procured a license from the Commission.

(h) License fees. The PPAC shall set an annual license by December 1st to be effective January 1st the following calendar year. Every license shall expire at midnight on December 31 of the year in which the license is issued.

(i) Real party in interest. The Commission shall not issue any license for a professional contest unless it is satisfied that the promoter is the real party in interest and intends to conduct, hold or give such contests himself, or unless the promoter receives at least twenty-five percent of the net receipts. A license may be revoked at any time if the Commission finds that the promoter is not the real party in interest.

(j) Suspension; Revocation of Licenses.

1. The Commission may suspend or revoke any license when in its judgment the licensee:
 - A. participated in any sham or fake professional contest;
 - B. fails to give his best efforts in a professional contest;
 - C. is guilty of any foul or unsportsmanlike conduct in connection with a professional contest; or
 - D. participates in an event while under the influence of illegal drugs.
2. Before revocation of a license, the Commission shall afford the licensee opportunity for a hearing, and upon request of the licensee and after reasonable notice, the Commission

shall conduct a hearing on the revocation, permitting the licensee to appear personally and by counsel, introduce evidence and examine and cross-examine witnesses.

3. A majority vote of the members of the Commission is required to revoke a license.

(k) Contracts.

1. Every professional boxer or professional wrestler competing in a professional contest shall be entitled to receive a copy of a written contract or agreement approved as to form by the PPAC binding a licensee to pay the professional boxer or professional wrestler a certain fixed fee or percentage of the gate receipts.

2. One copy of such contract or agreement shall be filed with the Commission and one copy shall be retained by the licensee or promoter of the professional contest.

(l) Insurance. The Commission may by rule require insurance coverage for each licensed professional boxer or professional wrestler to provide for medical, surgical and hospital care for injuries sustained while preparing for or engaged in a professional contest payable to such boxer or wrestler as beneficiary.

(m) Advances Against Contestant's Purse. No promoter or foreign co-promoter shall pay or give any money to a licensee before any professional contest as an advance against a contestant's purse or for a similar purpose, *except that* a promoter may, with the prior written consent of the Commission, pay or advance to a contestant necessary expenses for transportation and maintenance in preparation for a professional contest.

(n) Withholding of Purse.

1. The Commission may order a promoter to withhold any part of a purse or other funds belonging or payable to any contestant, manager or second if, in the judgment of the Commission, the contestant is not competing honestly or to the best of his skill and ability or if the manager or second has violated any of the provisions of this Code or any rule promulgated thereunder.

2. This section does not apply to any professional wrestler who appears not to be competing honestly or to the best of his skill and ability.

3. Upon the withholding of any part of a purse pursuant to this section, the commission shall immediately schedule a hearing on the matter as promptly as possible. If it is determined that such contestant, manager or second is not entitled to any part of his share of the purse or other funds, the promoter shall turn such money over to the Commission and it shall become forfeit to the Pueblo and be disposed of as are fees.

(o) Attendance at Weigh-ins; Medical Examinations; Professional Contests.

1. A member of the Commission shall be present at all weigh-ins, medical examinations and professional contests and shall see that the provisions of this Code and the rules made pursuant thereto are strictly enforced.

2. Every participant in a professional boxing contest shall be present and weighed in no later than twelve o'clock noon on the day of the professional contest.

(p) Length of professional contests; Rounds. No professional boxing contest shall be more than fifteen rounds in length, and each round shall not exceed three minutes in length. There shall be a one-minute rest between rounds. The Commission shall adopt rules governing the length of professional wrestling contests, duration of rounds and the period of rest between rounds.

(q) Minors; Participants. No person under the age of majority shall participate in or be licensed for any professional contest.

(r) Regulatory fees on promotions.

1. In addition to any other taxes or fees provided by law, there is imposed upon every promoter for the privilege of promoting a professional contest a regulatory fee in an amount determined pursuant to the rules of the Commission to be sufficient to cover the costs of regulating the contest.

2. The Commission shall adopt rules for the administration, collection and enforcement of the fee imposed pursuant to this section.

3. As used in this section, "total gross receipts of any professional contest" includes:

A. the gross price charged for the sale, lease or other exploitation of broadcasting, television or motion picture rights of the professional contest without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;

B. the face value of all tickets sold and complimentary tickets issued; and

C. any sums received as consideration for holding a professional contest at a particular location.

(s) Time of Payment of Regulatory Fee.

1. Any person upon whom the regulatory fee is imposed shall, within seventy-two hours after the completion of any professional contest for which an admission fee is charged and received or a contribution is requested and received, furnish to the Commission a written report on forms prescribed by the Commission showing:

A. the number of tickets sold and issued or sold or issued for the professional contest;

- B. the amount of the gross receipts or value thereof;
 - C. the amount of gross receipts derived from the sale, lease or other exploitation of broadcasting, motion picture or television rights of the professional contest, without any deductions for commissions, brokerage fees, distribution fees, advertising or any other expenses or charges; and
 - D. such other matters as the commission may prescribe.
2. The Commission may inspect the books, ticket stubs or any other data necessary for the proper enforcement of the regulatory fee and supervisory fee.
- (t) Supervisory Fee on Closed-circuit Telecasts or Motion Pictures; Report to Commission.
- 1. Any person who charges and receives an admission fee for exhibiting any live professional contest on a closed-circuit telecast or motion picture shall, within seventy-two hours after the event, furnish to the Commission a verified written report on a form prescribed by the Commission showing the number of tickets sold and issued or sold or issued and the gross receipts for the exhibition without any deductions.
 - 2. There is imposed a supervisory fee upon the privilege of exhibiting for an admission fee any live professional contest on a closed-circuit telecast or motion picture. A supervisory fee is imposed in an amount determined pursuant to the rules of the Commission to be sufficient to cover the costs of supervising the exhibition; provided that the fee shall not exceed five percent of the gross receipts derived from the exhibition.
- (u) Protective Headgear Required in all Amateur Boxing. No person shall permit, sponsor or promote any amateur to train as a boxer, engage in boxing matches or compete in boxing events without wearing protective headgear meeting the standards approved under the official rules of the USA Amateur Boxing Federation.

R-4 Tort Claims

- (a) Purpose. To provide a forum for a Person injured by a negligent act or omission of a Tribal Corporation by establishing a limited waiver of the Tribal Corporation's sovereign immunity.
- (b) Policy. Pursuant to Subpart J-3, the Pueblo only authorizes waivers of the sovereign immunity of a Tribal Corporation that are approved by the Tribal Council and that are written, express, and unequivocal.
- (c) Findings and Declarations.
- 1. The Pueblo is an inherently sovereign, federally recognized Indian tribe. Sovereignty includes the right to self-govern and immunity from suit absent Congressional abrogation or a written, express, and unequivocal waiver by the Pueblo.

2. Tribal sovereign immunity protects tribes from suits and court process involving commercial activities, whether conducted on or off Indian lands.
3. Tribal sovereign immunity protects tribal corporations owned by a tribe and created under its own laws, absent an express and unequivocal waiver of immunity by the tribe or Congressional abrogation.
4. Sovereign immunity protects the Pueblo and its limited resources by preventing the Pueblo, a Tribal Corporation, Tribal Officials, or any employee, agent or representative of the Pueblo or of a Tribal Corporation, from being sued without the consent of the Pueblo, so that the Pueblo may provide valuable governmental services and commercial activities for the benefit of the Pueblo, its Tribal Members and the community.
5. The Pueblo and its instrumentalities engage in commercial activities through the ownership or operation of Tribal Corporations. The Pueblo and its Tribal Members benefit from these commercial activities, which promote contact between business invitees and consumers with Persons acting on behalf of a Tribal Corporation. Such contact has the potential to cause Property Damage or Personal Injury in the event of a negligent act or omission of a Tribal Corporation.
6. The Pueblo finds that it is necessary and desirable to waive the sovereign immunity of its Tribal Corporations from time to time in a prudent, limited and express manner, as specified in this Subpart, in order to engage in commercial activities for the benefit of the Pueblo, its Tribal Members and the community.

(d) Definitions. In addition to the definitions provided for in Subpart A-3,

1. "Claim" or "Tort Claim" means a claim of Personal Injury or Property Damage to a Person proximately caused by an act or omission of a Tribal Corporation.
2. "Collateral Source" means benefits received or receivable from an insurance policy; benefits payable pursuant to a contract with a health care corporation, dental care corporation, or health maintenance organization; employee benefits; social security benefits; worker's compensation benefits; or Medicare/Medicaid benefits.
3. "Dangerous Condition" is a physical aspect of a facility or the use thereof which constitutes an unreasonable risk to human health or safety. A Dangerous Condition shall not exist solely because the design of any facility is inadequate nor due to the mere existence of wind, water, ice or temperature by itself, or by the mere existence of a natural physical condition.
4. "Person" means a natural person.
5. "Personal Injury" means bodily harm, sickness, or disease sustained by a Person, including death resulting from any of these.

6. "Petitioner" means the party who files a civil petition.
7. "Property Damage" means damage to, destruction of, or loss of use of tangible property.
8. "Pueblo law" means the laws, policies, regulations and customs of the Pueblo of Pojoaque, including but not limited to those codified in the Pueblo of Pojoaque Law and Order Code, Tribal Court decisions, and all resolutions and ordinances adopted by the Tribal Council, and all resolutions adopted by the Tribal Corporations, and all of these, as they may be amended from time to time.
9. "Tribal" means of or relating to the Pueblo of Pojoaque.
10. "Tribal Corporation" means a duly chartered corporation, whether chartered pursuant to Tribal, federal or state law, owned in whole or in part by the Pueblo.

(e) Limited Waiver of Sovereign Immunity.

1. The sovereign immunity of a Tribal Corporation is hereby waived for the sole and limited purpose of bringing forth certain Tort Claims made in accordance with this Subpart. This waiver is subject to all of the restrictions, limitations and procedures set forth in this Subpart. This Subpart is to be strictly construed.
2. The Pueblo consents to suit against the Tribal Corporation in the Tribal Court for suits based on Tort Claims under this Subpart. The Pueblo does not consent to suit in any other forum for such Claims and expressly preserves and retains its sovereign immunity to any tort suit filed in any other forum.
3. A Tribal Corporation's immunity from suit shall remain intact except to the limited extent that it is waived by this Subpart.
4. In the case of any Claim wherein it is alleged an injury was caused by the act or omission of a Tribal Corporation, any judgment, order or award allowed by this Subpart shall be entered only against such Tribal Corporation.
5. A Tribal Corporation's authority to enter into contracts containing a clear and unequivocal waiver of the Tribal Corporation's sovereign immunity, determined pursuant to the principles of Pueblo law and contract law, is not limited or altered in any way.
6. This Subpart does not constitute, and shall not be construed or interpreted to constitute, a waiver of sovereign immunity of the Pueblo as to any act or omission of the Pueblo. The Pueblo possesses and is legally entitled to sovereign immunity from liability for Tort Claims whether or not within the scope of this Subpart. By adoption of this Subpart, the Pueblo does not waive the Pueblo's sovereign immunity in any respect, and only authorizes a waiver of the Tribal Corporations' sovereign immunity within the narrow set of circumstances expressly provided in this Subpart.

(f) Jurisdiction. The Pueblo of Pojoaque Tribal Court shall have exclusive jurisdiction over all Claims brought pursuant to this Subpart. By filing a Tort Claim pursuant to this Subpart, a Petitioner consents to the jurisdiction of the Pueblo and is subject to all civil laws of the Pueblo.

(g) Procedure for Giving Notice of Claim. No action may be brought in the Pueblo of Pojoaque Tribal Court under this Subpart and no Claim shall be valid under this Subpart unless the Petitioner has sent advance written notice of the Claim.

1. Notice of Claim. To be valid, the written Notice of Claim required by this Subsection shall have been given no later than one hundred and eighty (180) days after the act or omission that gave rise to the injury occurred.
2. The written notice of Claim does not constitute the filing of a lawsuit in Tribal Court.
3. A Person alleging injuries shall send a written notice of the Claim to the Tribal Corporation at the addresses of Pueblo of Pojoaque Legal Department, 58 Cities of Gold Road, Suite 5, Santa Fe, NM 87506, Attn: Chief Legal Counsel; and to the Chief Executive Officer of the Tribal Corporation at the appropriate address.
4. In addition to filing a lawsuit in Tribal Court, the Person shall write a Notice of Claim which shall include the following:
 - A. The name, current address and telephone number of the Person making the Claim and the name, current address and telephone number of the Person's attorney, if any; and
 - B. A concise statement describing the location, conduct, circumstances, or other facts which brought about the injury; describing the injury; stating the time and place of injury; stating the name of the Tribal Corporation involved, and the name, address and telephone number if known, of any other Person involved or who has knowledge of the conduct, circumstances, facts or injury; and stating that amount of damages claimed.

(h) Court Proceedings.

1. Any Claim filed pursuant to this Subpart is not a Claim against the Pueblo, its officers or employees, or the insurance carrier for the Pueblo.
2. All proceedings shall be only before the Tribal Court, and there shall be no right to a trial by jury.

(i) Limitations on Damages. Any judgment, order or award for any Claim that proceeds pursuant to this Subpart shall comply with the following limitations:

1. No Claim or award for declaratory, equitable or injunctive relief;

2. No award for exemplary, punitive, consequential or incidental damages;
3. No award for attorney fees;
4. No award for loss of consortium;
5. No award for pain and suffering or mental anguish;
6. No award for pre-judgment interest;
7. No award for Claims outside the express coverage of the Tribal Corporation's liability insurance, including deductible amounts, except as specifically provided in any intergovernmental agreement involving the activities of a Tribal Corporation and in effect at the time of any incident giving rise to the Tort Claim;
8. No award shall exceed:
 - A. \$200,000.00 for Property Damage arising out of a single occurrence;
 - B. \$300,000.00 for all past and future medical and medically related expenses arising out of a single occurrence;
 - C. \$400,000.00 to any Person for any number of Claims arising out of a single occurrence for all damages permitted under this Subpart;
 - D. \$750,000.00 for all Claims by all Persons arising out of a single occurrence; and
9. Any claim of theft or negligence by a hotelkeeper or hotel employees are subject to the provisions of Subpart J-15.

(j) Limitations on Waiver of Sovereign Immunity; Exceptions. Notwithstanding any other provision of this Subpart, the Pueblo does not waive sovereign immunity of any Tribal Corporation for any action or Claim for any injury alleged to have resulted from any:

1. Exercise or performance of, or the failure to exercise or perform, a discretionary function or duty, or the implementation or failure to implement decisions by any Tribal Corporation whether or not the discretion was abused in any such matter;
2. Exercise or performance of, or the failure to exercise or perform, a discretionary function or duty, including planning and operational decisions or omissions based on policy judgment, including but not limited to negligent hiring and retention;
3. Exercise or performance or the failure to exercise or perform an administrative or licensing function;
4. Except as to Subpart J-15, Claims founded upon a statutory provision of Pueblo law;

5. Disputes over casino winnings;
6. Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval or other authorization;
7. Claims under a strict liability tort theory or breach of warranty theory;
8. Claims subject to the Federal Tort Claims Act, codified in 28 U.S.C. §§ 1346(b), 2671-2680 and 25 U.S.C. §450(f), or was otherwise covered by the Act. In all such cases the Federal Tort Claims Act shall provide the sole and exclusive remedy;
9. Claims based on the failure to enforce a law, to perform or the failure to perform an act or service, or to afford adequate protection, if the failure is reasonable under the circumstances then existing;
10. Claims within the scope of the Tribal Corporation's worker's compensation system, provided however, if the Employee has an independent Tort Claim not covered by the Tribal Corporation's worker's compensation system, that Tort Claim may be brought under this Subpart;
11. Injuries sustained arising out of and in the course of employment of a Person who is not an Employee of a Tribal Corporation, which are covered by, or eligible for, benefits under another worker's compensation system;
12. Claims arising out of conduct which exceeds the actor's scope of employment or authority;
13. Claims based on a natural condition of property or a Dangerous Condition on property of a Tribal Corporation that was not caused by an individual's negligent or other wrongful conduct and of which the Tribal Corporation did not have notice, either actual or constructive, and adequate opportunity to protect or warn against;
14. Claims by any Person present on the Tribal Corporation's property or facilities for activities not related to a Tribal Corporation's business;
15. Claims for loss due to theft or other intentional or criminal act, unless such Claim arises pursuant to the provisions of Subpart J-15; or
16. Claims based upon the act or omission of an independent contractor or an employee or agent of an independent contractor.

(k) Exclusive Remedy.

1. This Subpart provides the exclusive remedy with respect to a Tort Claim against a Tribal Corporation for Personal Injury or Property Damage and displaces any other

possible remedy regarding a Tort Claim, whether at general law, by regulation or ordinance, or otherwise, except as otherwise provided by Pueblo law.

2. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter is precluded without regard to when the act or omission occurred.

3. Judgment as Bar. Other than by appeal pursuant to Subpart B-5, the judgment in an action under this Subpart shall constitute a complete bar to any action by the Petitioner, by reason of the same subject matter, against a Tribal Corporation whose act or omission gave rise to the Claim.

4. A Claim pursuant to this Subpart may be considered abandoned and not be eligible for an award of any kind if a concurrent action seeking damages based on a Tort Claim theory for an injury arising from the same incident is pending in any other court. The Court may authorize a Claim to be filed under this Subpart if the Person making the Claim dismisses with prejudice the action pending in the other jurisdiction in a timely manner so as to prevent the Tribal Corporation from incurring expenses and efforts. If a Person making a Claim under this Subpart has received a judicial determination for an injury based on a Tort Claim theory in any other jurisdiction, a Claim under this Subpart is forever barred.

(l) Collateral Source Benefits.

1. In a suit under this Subpart in which a Petitioner seeks to recover for the expense of medical care, rehabilitation services, loss of earnings, loss of earning capacity, or other economic loss, evidence to establish that the expense or loss was paid or is payable, in whole or in part, by a Collateral Source shall be admissible to the Tribal Court.

2. The Tribal Court shall determine the amount of the Petitioner's expense or loss which has been paid or is payable by a Collateral Source.

3. If the Tribal Court determines that all or part of the Petitioner's expense or loss has been paid or is payable by a Collateral Source, the Tribal Court shall reduce that portion of the judgment which represents damages paid or payable by a Collateral Source by an amount equal to the sum as determined by the Court. This reduction shall not exceed the amount of the judgment for economic loss or that portion of the findings of the verdict which represents damages paid or payable by a Collateral Source.

4. Benefits from a Collateral Source shall not be considered payable or receivable unless the Tribal Court makes a determination that there is a previously existing contractual or statutory obligation on the part of the Collateral Source to pay the benefits.

(m) Statute of Limitations. In accordance with the provisions in Subpart G-6(a), any action against a Tribal Corporation shall be forever barred, unless such action is commenced within one (1) year after the date of the occurrence resulting in Personal Injury or Property Damage, except that a minor under the age of seven (7) years shall have until his/her ninth (9) birthday

in which to file. This provision applies to all Persons regardless of minority or other legal disability.

(n) Inconsistent Law. To the extent that this Subpart provides procedures or limitations that are distinct from any other Pueblo law governing Tort Claims against a Tribal Corporation, this Subpart shall govern.

(o) Severability. If any section of this Subpart is invalidated by the Pueblo Courts, all valid parts shall remain in effect.

(p) Date of Effectiveness. This Subpart shall apply only to Claims that arise from an act or omission that occurs after the date this Subpart is adopted by the Tribal Council.

R-5 Economic Development Plan Ordinance

(a) Authority. The Economic Development Plan Ordinance is enacted pursuant to the statutory authority conferred upon municipalities to allow public support of economic development (NM Statute Sections 5-10-1 through 5-10-13 1978). This Ordinance is adopted as part of the Pueblo of Pojoaque's economic development plan.

(b) Purpose.

1. The purpose of the Economic Development Plan Ordinance is to allow public support of economic projects to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of the Ordinance is to allow the Pueblo of Pojoaque to enter into one or more joint powers agreements with other local governments to plan and support regional economic development projects.

2. Local Economic Development Act.

A. Local governments are allowed to provide direct or indirect assistance to qualify business to implement economic development plans and projects. Further, more local and regional governments have the authority to contribute assets to development projects. However, the imposition of a tax must be approved by the voters in referendum.

B. Eligible uses: Municipalities may impose municipal infrastructure gross receipts tax and dedicate the revenue for economic development projects. A total of 0.25% tax (in four increments of 0.0626%) may be imposed.

(c) Definitions.

1. "Economic development project" means the provision of direct or indirect land, buildings or other infrastructure; public works improvements essential to the location assistance of a qualifying business and includes the purchase, lease, grant, or construction,

reconstruction, improvement or other acquisition or conveyance of expansion of a qualifying business; and payments for professional services contracts necessary for local or regional governments to implement or plan a project.

2. “Qualifying entity” means an existing or proposed corporation, limited liability business, partnership, joint venture, syndicate, association or other person that is one, or a combination of two or more of the following:

A. An industry for manufacturing, processing, or assembling of any agricultural or manufactured products;

B. A commercial enterprise for storing, warehousing, distributing, or selling products of agriculture, mining, or industry, but other than provided in Paragraph D of this subsection, not including any enterprise for sale of goods or commodities at retail or for the distribution to the public of electricity, gas, water, or telephone or other services commonly classified as public utilities;

C. A business in which all or part of the activities of the business involves the supplying of services to the general public or to government agencies or to a specific industry or customer, but, other than provided in Paragraph D of the subsection, not including business primarily engaged in the sale of goods or commodities at retail; or

D. A telecommunications sales enterprise that makes the majority of its sales to persons outside of New Mexico.

3. “Project participation agreement” means an agreement between a qualifying entity and the Pueblo of Pojoaque whereby the Pueblo provides assistance to an economic development project in exchange for the benefits received as set forth in this Ordinance.

4. “Governing body” means the Tribal Council.

(d) Economic Development Plan.

1. The authorized Tribal representative, after approval of the governing body, may assist economic development projects in any legally permissible manner, including but not limited to provisions of land, buildings and infrastructure; provided that all the requirements of this Ordinance are met. The Pueblo of Pojoaque may provide land, buildings or infrastructure it already owns, or may build, purchase or lease the facilities needed for an economic development project. The Pueblo of Pojoaque, at its discretion, may also contribute to the payment of costs for professional service contracts such as industry feasibility studies, and planning and design needed to implement a project.

2. The governing body may consider offering all forms of assistance allowed under this Ordinance and any other legally permissible forms of assistance. However, this does not establish any obligation on the communities’ part to offer any specific type or level of assistance.

(e) Tribal Economic Development Corporation.

1. The governing body assigns the Tribal Economic Development Corporation Board of Directors the following responsibilities with regard to the economic development plan for the Pueblo of Pojoaque:

A. Reviewing and making recommendations to the governing body on applications for assistance for economic development projects; and

B. Reviewing and making recommendations to the governing body on applications for industrial revenue bonds (IRBs).

2. The Tribal Economic Development Corporation shall at all times provide for a Board of Directors position for the Pueblo of Pojoaque. The Tribal authorized representative shall appoint a member of the Board of Directors with the advice and consent of the Tribal Council.

(f) Application Requirements.

1. Any qualifying entity may propose an economic development project to the Pueblo of Pojoaque. Meeting the definition of a qualifying entity does not create any obligation on the part of the Pueblo of Pojoaque.

2. Applications from qualifying entities shall be submitted to the Pueblo of Pojoaque on forms provided by the Pueblo.

3. Applications shall contain the following information for business applicants:

A. Identification information:

i. Complete name and address of entity;

ii. Incorporation papers with by-laws;

iii. List of board of directors and executive director, with addresses; and

iv. Resumes of all directors and officers.

B. Evidence of financial solvency:

i. Financial statements (income statements and balance sheets) for the past three years;

ii. Federal Tax number, New Mexico State Taxation and Revenue number and county business license; and

iii. Projected income statement for at least three years.

C. Evidence of organizational capacity:

i. Brief history of the entity;

ii. Organizational chart of the entity; and

iii. Business Plans for the entity and proposed project (shall include pro-forma cash flow analysis).

D. The project participation agreement and any other pertinent information will be forwarded to the governing body for final consideration at a public meeting.

(g) Applicable Review Criteria.

1. Applications for economic development projects requesting assistance from the Pueblo of Pojoaque, which meet the policies and objectives of the communities' economic development plan, shall receive priority. Examples include, but are not limited to:

A. Manufacturing firms (including intellectual property such as computer software);

B. Projects that enhance the exporting capacity of business and/or provide goods and services that currently have to be imported into the Pueblo;

C. Private businesses seeking to build, expand, or relocate;

D. Private businesses that provide facilities or services that enhance the ability of the Pueblo of Pojoaque;

E. Name of the Tribal Communities' businesses to operate;

F. Organizations, which assist business start-ups or bring small businesses together to increase their competitive abilities. This must involve a tangible project, which will create jobs and promote an industry. Examples include, but are not limited to:

i. Business incubators;

ii. Art incubators or coalitions (e.g., a performing arts coalition seeking construction, rehearsal, or performance facilities);

iii. Public markets for farmers, gardeners, crafts, etc.; and

iv. Organizations that foster economic development by promoting workforce development efforts such as apprenticeships or other job training programs.

G. Projects in industry clusters listed above are encouraged, but others are eligible to apply as well. The intention is to retain flexibility in the use of incentives; and

H. Qualifying entities with existing contracts or projects with the community when this plan is adopted may propose a restructuring of their projects as an economic development project.

2. All applications for economic development projects requesting economic assistance from the community shall submit a cost-benefit analysis. Preparing a cost-benefit analysis will be the responsibility of the applicant. The Pueblo of Pojoaque retains the right to specify a format and methodology for the cost-benefit analysis. The Tribal Economic Development Corporation shall review and approve the methodology used. The source and rationale for any multiplier effects shall be identified. The cost-benefit analysis shall show that the Pueblo of Pojoaque will recoup the value of its donation within a period of ten (10) years. The analysis shall address the following:

A. The number and type of jobs to be created—both temporary construction jobs and permanent jobs (by New Mexico Department of Labor job categories);

B. Pay scale of jobs;

C. Determination of which jobs are expected to be filled locally and which will be filled by transfers from other facilities or recruited from outside the Pueblo of Pojoaque areas;

D. Total payroll expected to start-up and after one year;

E. Anticipated impact on local tax base; and

F. Anticipated impact on local school systems.

3. All applicants for economic development projects requesting economic assistance from the Pueblo of Pojoaque shall require the same review required of industrial revenue bond applications. This review shall focus on environmental and community impacts of proposed projects. Special attention shall be given to job training and career advancement programs and policies. Projects shall demonstrate a strong commitment to providing career opportunities for the Pueblo of Pojoaque area residents. Cultural impacts of projects shall also be considered.

4. Any qualifying entity seeking assistance shall prepare and make available a job training and career development plan for their employees.

5. All applicants for economic development projects requesting economic assistance from the Pueblo of Pojoaque shall clearly demonstrate the benefits that will accrue to the community as a result of the donation of public resources. The Pueblo of Pojoaque has

considerable flexibility in determining what is considered as adequate benefits. Benefits such as providing components or production capabilities, which enhance a targeted industry cluster, or addressing critical deficiencies in a regional economy, may be recognized. The benefits claimed on any proposal will receive careful scrutiny. However, it is the intent of this Ordinance to be flexible in the evaluation of these benefits, and to recognize the qualitative, as well as quantitative, impact of a proposal.

6. All applicants for economic development projects requesting assistance from the Pueblo of Pojoaque shall clearly demonstrate how the qualifying entity is making a substantive contribution. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property, or other things or services of value for the expansion or improvement of the economy. The Pueblo of Pojoaque retains flexibility in defining the “substantive contributions.” The benefits identified in the previous paragraphs may be accepted as adequate contributions on their own, or cash donations may be required. Assistance in providing affordable housing to its employees or the community at large may also be considered. Contribution for a given project shall be at the discretion of the governing body.

(h) Public Safeguards.

1. All economic development projects receiving assistance from the Pueblo shall be subject to an annual performance review conducted by the Pojoaque Pueblo Enterprise Corporation. This review shall evaluate whether the project is achieving the goals and objectives set forth in the project participation agreement. This review shall be presented to the governing body for consideration. The governing body at a public hearing may terminate assistance to the economic development project by provisions set forth in the agreement, which terminates the agreement and specifies the disposition of all assets and obligations of the project.

2. The Pueblo of Pojoaque shall retain a security interest, which shall be specified in the project participation agreement. The type of security interest will depend on the nature of the economic development project and assistance provided by the Pueblo of Pojoaque. Types of security may include, but are not limited to:

- A. Letter of credit to the Pueblo of Pojoaque;
- B. Performance bond equal to the Pueblo of Pojoaque contribution;
- C. A mortgage or lien on the property or equipment;
- D. Pro-rated reimbursement of donation if business reduces workforce or leaves the community before the term agreed to; or
- E. Other security agreeable to both parties.

3. Should a qualifying entity move, sell, lease, or transfer a majority interest in the economic development project before the expiration of the project participation agreement, the Pueblo of Pojoaque retains the right to deny any and all land assignments, sales, leases, or transfers of interest in the economic development project until adequate assurances are made that the transferee, assignee, or lessee is a qualifying entity and that the terms of agreement will be satisfied by the transferee, assignee, or lessee. At its discretion, the Pueblo of Pojoaque may choose to deny said assignment, lease, or transfer or may negotiate a new agreement with the new operator or the Pueblo of Pojoaque may reclaim the facility and enter into an agreement with the qualifying entity.

4. Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for a minimum of ten (10) years from the date the Ordinance is adopted and the governing body passes the project participation agreement.

(i) Project Participation Agreement.

1. The qualifying entity shall prepare with the Pueblo of Pojoaque a project participation agreement. This agreement is the formal document that states the contribution and obligation of all parties in the economic development project. The agreement must state the following items:

A. The economic development goals of the project;

B. The contribution of the town and the qualifying entity;

C. The specific measurable objectives upon which the performance review will be read;

D. A schedule for project development and goal attainment;

E. The security being offered for the town's investment;

F. The procedures by which a project may be terminated and the Pueblo's investment recovered; and

G. The time period for which the Pueblo shall retain an interest in the project. Each project agreement shall have a "sunset" clause after which the Pueblo of Pojoaque shall relinquish interest in and oversight of the project.

2. Each project participation agreement shall be subject to review and approval by the governing body at a public hearing.

(j) Project Monies. All project moneys shall be kept in a separate account by the entity and the Pueblo of Pojoaque, with such account clearly identified. These accounts shall be subject to an annual independent audit.

(k) Termination. The governing body may terminate this Ordinance and the Pueblo of Pojoaque economic development plan and any or all project participation agreements undertaken under its authority. Termination shall be by Ordinance at a public hearing or in accordance with the terms of the project participation agreement. If an Ordinance or project participation agreement is terminated, all contract provisions of the project participation agreement regarding termination shall be satisfied. Upon termination of the Ordinance or any project participation agreement, any Pueblo monies remaining in the Pueblo project accounts shall be transferred to the Pueblo of Pojoaque general fund.

(l) Joint Regional Projects. The Pueblo of Pojoaque may engage in economic development projects involving one or more other government entities for projects that encompass more than one municipality or county. In such instances, the relevant governing bodies shall adopt a joint powers agreement. This agreement will establish the application criteria and the terms of a joint powers agreement shall be consistent with the provisions of this Ordinance.