



## **PUEBLO OF ISLETA**

### **ORDINANCE ON PATERNITY DETERMINATIONS**

#### **ARTICLE 1: PURPOSE, AUTHORITY, AND SCOPE**

##### **Section 1: Purpose**

The Purpose of this Ordinance on Paternity Determinations (hereinafter “Ordinance”) is to enact statutory law for the Pueblo of Isleta Tribal Court to adjudicate issues of paternity.

##### **Section 2: Authority**

The authority for this Ordinance is derived from the Pueblo of Isleta Constitution. “[T]he powers of council shall include the following: ... (e) To enact ordinances, subject to approval by the Secretary of the Interior, to protect the peace, safety, property, health, and general welfare of the members of the Pueblo of Isleta.” Art. V, Sec. 2(e).<sup>1</sup>

##### **Section 3: Scope**

This Ordinance shall extend to any individual who falls within the jurisdiction of the Pueblo of Isleta Tribal Court, as determined by Pueblo of Isleta law and applicable federal law. This Ordinance shall not apply to determinations of paternity already adjudicated or in the process of adjudication by Tribal Court. Any acknowledgments of paternity that were signed and any presumed father determinations that were made prior to the enactment of this Ordinance shall remain in full effect and full force.

---

<sup>1</sup> On September 25, 2012, Tribal Council officially rescinded Section 1-1-20 of the 1965 Law and Order Code by motion and vote (vote count 8-0-1).

## ARTICLE 2: TRIBAL COUNCIL FINDINGS AND DEFINITIONS

### Section 1: Tribal Council Findings

The Pueblo of Isleta Tribal Council hereby finds:

**WHEREAS**, determinations of paternity are a necessary and important aspect of the Pueblo of Isleta Judiciary and Tribal Membership;

**WHEREAS**, issues of paternity affecting membership in the Pueblo of Isleta are under the jurisdiction of Pueblo of Isleta Tribal Court pursuant to Article II, Section 2, yet the Pueblo of Isleta has no substantive or procedural law to guide the Pueblo of Isleta Judiciary;

**WHEREAS**, the Pueblo of Isleta should have substantive and procedural law on determinations of paternity, in order to provide Tribal Members and others with written, uniform rules and objective standards to be utilized by Pueblo of Isleta Judiciary;

**WHEREAS**, other jurisdictions have enacted written, uniform rules and objective standards to be utilized by courts of law to make determinations of paternity; and

**WHEREAS**, it is in the best interests of the Pueblo of Isleta to enact this Ordinance.

**THEREFORE**, this Ordinance is hereby enacted.

### Section 2: Definitions

A. A “*presumed father*” shall mean an individual who meets the presumptions of paternity prescribed in Article 3, Section 1.

B. An “*acknowledged father*” shall mean an individual who has signed an acknowledgement of paternity prescribed in Article 3, Section 3.

C. An “*adjudicated father*” shall mean an individual who is found to be the biological father of a child by the Pueblo of Isleta Tribal Court.

D. A “*Tribal Member*” shall mean an enrolled member of the Pueblo of Isleta.

E. The “*Pueblo of Isleta Judiciary*” shall mean the Pueblo of Isleta Tribal Court and the Pueblo of Isleta Appellate Court.

F. An “*Immediate Family Member*” shall mean a father, mother, sister, brother, or child of an individual—biological or through law (*i.e.*, stepfather).

### **ARTICLE 3: ACKNOWLEDGMENT OF PATERNITY**

#### **Section 1: Presumption of Paternity**

A. A man is presumed to be the father of a child if:

(1) he and the mother of the child are married to each other and the child is born during the marriage;

(2) he and the mother of the child were married to each other and the child is born within three hundred days (approximately ten months) after the marriage is terminated by death, annulment, declaration of invalidity or divorce or after a decree of separation;

(3) before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred days (approximately ten months) after its termination by death, annulment, declaration of invalidity or divorce or after a decree of separation.

B. A presumption of paternity established pursuant to this section may be rebutted only by an adjudication pursuant to Pueblo of Isleta law.

#### **Section 2: Acknowledgement of Paternity**

The mother of a child and a man claiming to be the biological father of the child may sign an acknowledgment of paternity with intent to establish the man's paternity.

#### **Section 3: Execution of Acknowledgement of Paternity**

A. An acknowledgment of paternity shall be on a form provided by the Pueblo of Isleta. Nothing in this Ordinance shall be construed to prohibit the Pueblo of Isleta from utilizing State of New Mexico or other state or international forms. Such determination on what form to use shall be made by the Pueblo of Isleta Census / Enrollment Department and shall be signed or otherwise authenticated under penalty of perjury.

B. An acknowledgment of paternity is void if it:

(1) states that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the Pueblo of Isleta Census / Enrollment Department;

(2) states that another man is an acknowledged or adjudicated father; or

(3) falsely denies the existence of a presumed, acknowledged or adjudicated father of the child.

C. A presumed father may sign or otherwise authenticate an acknowledgment of paternity, in accordance with subsection (A) above.

**Section 4: Denial of Paternity**

A. A presumed father may sign a denial of his paternity.

B. The denial is valid only if:

(i). an acknowledgment of paternity signed or otherwise authenticated by another man is filed pursuant to this Ordinance;

(ii). the denial is on a form provided by the Pueblo of Isleta and is signed or otherwise authenticated under penalty of perjury; and

(iii). the presumed father has not previously:

(1) acknowledged his paternity; or

(2) been adjudicated to be the father of the child.

**Section 5: Rules for Acknowledgement and Denial of Paternity**

A. An acknowledgment of paternity and a denial of paternity may be contained in a single document or may be signed in counterparts, and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.

B. An acknowledgment of paternity or a denial of paternity may be signed before or after the birth of the child.

C. An acknowledgment of paternity or denial of paternity signed by a presumed father who is a minor is valid if accompanied by a signature by that minor's parent(s) or legal guardian(s).

**Section 6: Effect of Acknowledgement or Denial of Paternity**

A. Except as otherwise provided in this Ordinance, a valid acknowledgment of paternity filed with the Pueblo of Isleta is equivalent to an adjudication of paternity of a child.

B. Except as otherwise provided in this Ordinance, a valid denial of paternity by a presumed father filed with the Pueblo of Isleta in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father.

**Section 7: Filing Fee**

The Pueblo of Isleta shall charge a fee for filing an acknowledgment of paternity or denial of paternity, the amount of which will be determined by Pueblo of Isleta Tribal Court according to established policy.

**Section 8: Rescission of Acknowledgement or Denial of Paternity**

A. Proceeding Required.

A signatory may rescind an acknowledgment of paternity or denial of paternity only by means of a judicial proceeding to rescind the acknowledgment or denial of paternity. A proceeding to rescind an acknowledgment of paternity or a denial of paternity shall be brought at any time.

B. Procedure for rescission or challenge.

(1) Every signatory to an acknowledgment of paternity and any related denial of paternity shall be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

(2) For the purpose of rescission of or challenge to an acknowledgment of paternity or denial of paternity, a signatory submits to the personal jurisdiction of the Pueblo of Isleta Tribal Court by signing the acknowledgment or denial, effective upon the filing of the document with the Pueblo of Isleta.

(3) Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the Pueblo of Isleta Tribal Court shall not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

(4) At the conclusion of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the Pueblo of Isleta Tribal Court shall order the birth record of the child by amended, if applicable.

**Section 9: Full Faith and Credit on Acknowledgement or Denial of Paternity**

The Pueblo of Isleta Tribal Court may give full faith and credit to an acknowledgment of paternity, a denial of paternity, or an adjudication of paternity determination effective in a State or other Indian tribe if the acknowledgment, denial or adjudication has been signed and is otherwise in compliance with the law of that State or other Indian tribe. The Pueblo of Isleta has the authority to require proceedings to determine paternity in the event that full faith and credit is not granted in a given instance. Such proceedings shall be conducted according to this Ordinance.

**Section 10: Forms for Acknowledgment and Denial of Paternity**

A. The Pueblo of Isleta shall prescribe forms for the acknowledgment of paternity and the denial of paternity as described in Section 3.

B. A valid acknowledgment of paternity or denial of paternity is not affected by a later modification of the prescribed form.

**Section 11: Release of information**

A. The Pueblo of Isleta may release information relating to the acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to courts and to other agencies for good cause and as permitted by Pueblo of Isleta law and policy.

B. Information related to the acknowledgment of paternity or denial of paternity shall be filed with the Pueblo of Isleta Census / Enrollment Department on an ongoing basis.

**ARTICLE 4: GENETIC (DNA) TESTING**

**Section 1: Scope**

This Article governs genetic testing of a person to determine parentage, whether the person:

A. voluntarily submits to testing;

B. is tested pursuant to an order of the Tribal Court; or

C. is tested pursuant to an order of the Tribal Enrollment Committee, acting pursuant to its lawful authority under the Tribal Enrollment Ordinance.

**Section 2: Order for Testing**

A. Except as otherwise provided in this Article, the Tribal Court shall order the child and other designated persons to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:

(1) alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the persons; or

(2) denying paternity and stating facts establishing a possibility that sexual contact between the persons, if any, did not result in the conception of the child.

B. If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

C. Tribal Court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the biological father of the child. If each brother satisfies the requirements as the identified father of the child pursuant to this Article, without consideration of another identical brother being identified as the father of the child, Tribal Court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

### **Section 3: Requirements for Genetic Testing**

A. Genetic testing shall be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

- (1) the American association of blood banks or a successor to its functions;
- (2) the American society for histocompatibility and immunogenetics or a successor to its functions; or
- (3) an accrediting body designated by the federal secretary of health and human services.

B. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each person undergoing genetic testing.

C. The retention and destruction of the specimen used for genetic testing shall be governed by contract between the Pueblo of Isleta and the testing laboratory. All information obtained from genetic testing shall be sealed by Tribal Court and shall not be disclosed to any non-party except upon petition to Tribal Court and for good cause. Notwithstanding such non-disclosure, a copy of the information from genetic testing shall be filed with the Pueblo of Isleta Census / Enrollment Department, who shall maintain the information as part of the census files. Use of the information by the Pueblo of Isleta Census / Enrollment Department shall be in strict accordance with the confidentiality and non-disclosure provisions of the Tribal Enrollment Ordinance and its policies and procedures.

### **Section 4: Report of Genetic Testing**

A. A report of genetic testing shall be in a record and signed under penalty of perjury and fraud by a designee of the testing laboratory. A report made pursuant to the requirements of this Article is self-authenticating.

B. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

- (1) the names and photographs of the persons whose specimens have been taken;
- (2) the names of the persons who collected the specimens;
- (3) the places and dates the specimens were collected;
- (4) the names of the persons who received the specimens in the testing laboratory;
- (5) the dates the specimens were received; and
- (6) the accreditation of the testing facility.

#### **Section 5: Genetic Testing Results, Rebuttal**

A. A man is rebuttably identified as the father of a child if: (i) the genetic testing complies with this Article; (ii) testing is conducted on the alleged father, mother and the child; and (iii) the results of testing disclose that:

- (1) the man has at least a ninety-nine point nine percent (99.9%) probability of paternity, using a prior probability of zero point five zero, as calculated by using the combined paternity index obtained in the testing and
- (2) a combined paternity index of at least one hundred to one.

B. A man identified pursuant to subsection A of this section as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this Article that:

- (1) excludes the man as a biological father of the child; or
- (2) identifies another man as the possible father of the child.

C. Except as otherwise provided in Section 2.C, if more than one man is identified by genetic testing as the possible father of the child, Tribal Court shall order them to submit to further genetic testing to identify the biological father.



D. Nothing in this Article shall be construed to deny or limit Tribal Court of obtaining expert testimony from a non-biased, third party expert in genetic testing.

**Section 6: Costs of Genetic Testing**

A. The cost of initial genetic testing shall be borne by:

- (1) by the person who made the request;
- (2) by agreement of the parties; or
- (3) by order of Tribal Court.

B. If a party to a proceeding contests the results of testing, that party shall bear the costs of additional testing.

**Section 7: Additional Genetic Testing**

Prior to a final adjudication, Tribal Court may order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child, Tribal Court shall not order additional testing unless Tribal Court deems necessary.

**Section 8: Genetic testing when specimens not available.**

A. Subject to Subsection B of this section, if a genetic-testing specimen is not available from a man who may be the father of a child or the mother of the child, upon notice and after an opportunity for a hearing with evidence presented, and for good cause and under circumstances the court considers to be just, the Tribal Court may order the following persons to submit specimens for genetic testing:

- (1) the parents of the man;
- (2) brothers and sisters of the man;
- (3) other children of the man and their mothers;
- (4) other relatives of the man necessary to complete genetic testing; or
- (5) relatives of the mother of the child necessary to complete genetic testing.

B. The man who may be the father of a child shall be identified as the father of the child if:

- (1) the genetic testing complies with this Article;

(2) the results disclose at least an eighty point zero percent (80.0%) probability of paternity, using a prior probability of zero point five zero, as calculated by using the combined paternity index obtained in the testing, and;

(3) there exists supporting evidence, the sufficiency of which shall be determined by Tribal Court.

C. Issuance of an order pursuant to this section requires a finding that a need for genetic testing outweighs the legitimate interests of the person sought to be tested.

**Section 9: Confidentiality of genetic testing.**

A. Release of the report of genetic testing for parentage shall be released only to the parties tested or their legal representative or guardian, and to the Pueblo of Isleta Census / Enrollment Department.

B. A person who intentionally releases an identifiable specimen of another person for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the person who furnished the specimen is guilty of fraud.

**ARTICLE 5: PROCEEDINGS TO ADJUDICATE PARENTAGE OF A CHILD**

**Section 1: Proceeding authorized.**

A civil proceeding may be maintained in the Tribal Court to adjudicate the parentage of a child. The proceeding shall be governed by the rules of Tribal Court, unless this Ordinance provides otherwise, in which case the provisions of this Ordinance shall govern. The mother of the child and an alleged father or presumed father shall be deemed competent by Tribal Court to testify. Any other witnesses may be compelled to testify by Tribal Court.

**Section 2: Standing to maintain proceeding.**

Subject to this Ordinance, a proceeding to adjudicate parentage may be maintained by:

- A. the child;
- B. the mother of the child;
- C. a man whose paternity of the child is to be adjudicated;
- D. the Pueblo of Isleta Social Services Department in cases involving a child under the age of 18 who is receiving services of said Department and where said Department has made a showing that a proceeding is a necessary aspect of care for the child;

E. a representative authorized by Pueblo of Isleta law to act for a person who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated or a minor; or

F. an Immediate Family Member of an individual in Subsection A, B or C, who has deceased, is incapacitated, or is a minor.

**Section 3: Parties to proceeding.**

The following persons shall be joined as parties in a proceeding to adjudicate parentage:

- A. the mother of the child;
- B. a man whose paternity of the child is to be adjudicated; and
- C. other persons or entities listed in Section 2.

**Section 4: Personal jurisdiction.**

A. A person shall not be adjudicated to be a parent unless Tribal Court has personal jurisdiction over the person.

B. Tribal Court may exercise personal jurisdiction over an individual who is not a Pueblo of Isleta tribal member, or the guardian or conservator of such individual.

C. Lack of jurisdiction over one person does not preclude Tribal Court from making an adjudication of parentage binding on another person over whom Tribal Court has personal jurisdiction.

**Section 5: No limitation on child having no presumed, acknowledged or adjudicated father.**

A. A proceeding to adjudicate the parentage of a child having no presumed, acknowledged or adjudicated father may be commenced by the child at any time, even after:

- (1) the child becomes an adult; or
- (2) an earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

**Section 6: Joinder of proceedings.**

Except as otherwise provided in this Ordinance or by Tribal Court order, a proceeding to adjudicate parentage may be joined with a proceeding in Tribal Court for adoption, termination

of parental rights, child custody or visitation, child support, divorce, annulment, legal separation, probate or administration of an estate or other appropriate proceeding.

**Section 7: Child as party; representation.**

A. A minor child is a permissible party, but is not a necessary party to a proceeding pursuant to this Article.

B. Tribal Court shall appoint a *guardian ad litem* to represent a minor or incapacitated child if the child is a party or if Tribal Court finds that the interests of the child are not adequately represented.

**Section 8: Admissibility of results of genetic testing; expenses.**

A. A record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects, in a writing delivered to the adverse party, to the record's admission within fourteen days after its receipt by the objecting party. The objecting party shall cite specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

- (1) voluntarily or pursuant to an order of Tribal Court; or
- (2) before or after the commencement of the proceeding.

B. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition or another method approved by Tribal Court. Unless otherwise ordered by Tribal Court, the party offering the testimony bears the expense for the expert testifying.

**Section 9: Consequences of declining genetic testing.**

A. An order for genetic testing is enforceable by contempt of court when a person whose paternity is being determined refuses to comply with an order by the court for genetic testing for longer than thirty (30) days, or as determined by Tribal Court on a case by case basis.

B. If a person whose paternity is being determined declines to submit to genetic testing ordered by Tribal Court, the Tribal Court for that reason may issue a civil fine, hold the individual in contempt of court, issue a warrant, or issue an order of incarceration.

C. If the mother is not alive or is otherwise unavailable, Tribal Court may order the testing of the child, every man whose paternity is being adjudicated, and other individuals listed in Article 4, Section 8.A, of this Ordinance.

**Section 10: Rules for adjudication of paternity.**

Tribal Court shall apply the following rules to adjudicate the paternity of a child:

A. the paternity of a child having a presumed, acknowledged or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child;

B. unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child pursuant to this Ordinance shall be adjudicated the father of the child;

C. if Tribal Court finds that genetic testing pursuant to Article 5 neither identifies nor excludes a man as the father of a child, Tribal Court shall not dismiss the proceeding. In that event, the results of additional genetic testing are admissible to adjudicate the issue of paternity; and

D. unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall be adjudicated not to be the father of the child.

**Section 11: Jury prohibited.**

Tribal Court, without a jury, shall adjudicate paternity of a child.

**Section 12: Hearings; inspection of records.**

A. On request of a party and for good cause shown, Tribal Court may close a proceeding to the public and may declare the proceeding to be confidential. Notwithstanding the foregoing, Tribal Court shall file a copy of the final Tribal Court order and testing results with the Pueblo of Isleta Census / Enrollment Department for cases. Such orders and testing results shall be kept confidential according to existing Pueblo of Isleta law, including the Tribal Enrollment Ordinance, Tribal Enrollment Committee By-Laws and Tribal Enrollment Committee Policies and Procedures.

B. Other papers and records are available only with the consent of the parties or on order of Tribal Court for good cause.

**Section 13: No Order on default.**

Tribal Court shall only issue an order adjudicating the paternity of a man according to the procedures in this Ordinance and shall not issue an order adjudicating the paternity of a man solely because he is in default.

**Section 14: Dismissal for want of prosecution.**

Tribal Court may issue an order dismissing a proceeding for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

**Section 15: Order adjudicating parentage.**

A. Tribal Court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.

B. An order adjudicating parentage shall identify the child by name and date of birth.

C. Tribal Court may assess filing fees, reasonable fees of counsel, experts and the child's guardian ad litem, fees for genetic testing, other costs, necessary travel and other reasonable expenses incurred in a proceeding pursuant to this Ordinance. Tribal Court may award attorney fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name. Tribal Court may order these fees, costs and expenses to be paid by any party in proportions and at times as determined by the court.

D. On request of a party and for good cause shown, Tribal Court may order that the name of the child be changed.

E. If the order of Tribal Court is at variance with the child's birth certificate, the order shall contain a provision ordering the issuance of an amended birth certificate.

**ARTICLE 6: OTHER PROVISIONS**

**Section 1: Severability**

If any provision of this Ordinance is found to be invalid or unconstitutional by a court of competent jurisdiction, the remaining provisions shall remain valid, constitutional, and in force.

**Section 2: Amendments**

Tribal Council reserves the right to amend this Ordinance from time to time. Such amendment shall not take effect unless decided by Tribal Council at a duly called meeting with quorum present and upon majority vote.

**Section 3: Repealer Clause**

Any and all prior Pueblo of Isleta Tribal Council resolution or ordinance that conflicts with or is inconsistent with this Ordinance is hereby repealed.

**\*\*END\*\***