



# Law and Order Code

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Pueblo of Isleta

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## COMPILER'S NOTES:

This Revised Law and Order Code was adopted by action of the Pueblo of Isleta Tribal Council in Resolution 2008-192, "Adopting Pueblo of Isleta Revised Law and Order Code and Rescinding and Supplanting the 1965 Law and Order Code Except with Respect to Certain Specific Provisions," dated September 11, 2008. In accordance with the requirements in Article X, Section 2, of the Pueblo of Isleta Constitution, Titles 1 and 30 of the Revised Law and Order Code and Resolution 2008-192 were timely submitted as of 2008 to the Secretary of the Interior for approval and, after 120 days and no notice of Secretarial approval or disapproval having been received, the Code was deemed approved and effective as of January 10, 2009.

Pursuant to the Pueblo of Isleta Constitution Art. X, Code amendments adopted after April 6, 2016 do not require submission to the Secretary of Interior unless Secretary review is explicitly required by either the Pueblo of Isleta Constitution or by applicable federal law.

Tribal Council approved by Motion on September 20, 2017 amending the offenses of:

- 30-04-03 Assault.
- 30-04-04 Aggravated Assault.
- 30-10-04 Aggravated Assault on a Household Member.
- 30-10-05 Battery on a Household Member.

and adding the new criminal offenses of:

- 30-04-15 Battery.
- 30-04-16 Aggravated Battery.
- 30-04-17 Assault on a Police Officer.
- 30-04-18 Aggravated Assault on a Police Officer.
- 30-04-19 Battery on a Police Officer.
- 30-04-20 Aggravated Battery on a Police Officer.
- 30-10-09 Assault on a Household Member.
- 30-10-10 Aggravated Battery on a Household Member.

Tribal Council adopted Resolution 2022-082 on August, 30, 2022, adding the following provisions:

- 30-22-01 Involuntary Emergency Mental Health Evaluation, Detention, and Treatment
- 30-22-02 Involuntary Mental Health Commitment of Adults for Thirty Days
- 30-22-03 Extreme Risk Firearm Protection Act
- 30-22-04 Definitions

and amending Sec. 30-06-02 for conformity with the new chapters.

Tribal Council adopted Resolution 2023-045 on June 22, 2023 amending the following provisions to legalize medical cannabis and on August 10, 2023 amending the following provisions to set a maximum possession limit of medical cannabis.

- 30-18-02 Possession of Controlled Substances
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- 30-18-05 Possession of Drug Paraphernalia
- 30-21-02 Definitions

Tribal Council adopted Resolution 2023-064 on August 22, 2023, adding the following provisions:

- 01-02 Personal Injury Actions
- 02-01 Pueblo of Isleta Governmental Claims Act

And creating Title 2, titled “Pueblo of Isleta Government”

and retitling Title 1 to “Pueblo of Isleta Government;” 01-01 to “Retained Sections of 1965 Law and Order Code”

Tribal Council adopted Resolution 2023-075 on September 26, 2023, adding the following provision:

- 04-06 Pueblo of Isleta Design/Construction Tax, effective January 1, 2024, and creating Title 4, titled “Taxation,”

and codifying and renumbering the following taxation laws previously adopted by Tribal Council:

- Pueblo of Isleta Enterprise Sales Tax Ordinance, originally adopted by Tribal Council through on April 15, 2008 and thereafter amended through Resolution No. 2010-111, and now codified within 04-01
- Pueblo of Isleta Cigarette Tax Ordinance, originally adopted by Tribal Council on April 6, 2010 and thereafter amended on June 10, 2010 and July 13, 2011, and now codified within 04-02;
- Pueblo of Isleta Lodger Tax Ordinance, originally adopted by Tribal Council through Resolution 2008-120 on April 15, 2008, and now codified within 04-03;
- Pueblo of Isleta Gas Tax Ordinance, originally adopted by Tribal Council through Resolution No. 99-01 on July 6, 1999 and thereafter amended through Resolution No. 2010-145 on December 30, 2010, and now codified within 04-04;
- Pueblo of Isleta Internet Tax Ordinance, originally adopted by Tribal Council through Resolution 2022-026 and executed through cooperative agreement with the State of New Mexico on April 6, 2022, and now codified within 04-05.

Tribal Council adopted Resolution No. 2023-076 on October 3, 2023, adding the following provisions:

- 30-12-20 Unauthorized Harboring of a Non-Tribal Member
- 30-12-21 Unauthorized Entry or Residency

Tribal Council adopted Resolution No. 2023-101 on December 12, 2023, amending and retitling the following provisions in order to authorize civil enforcement actions as to non-Indians and to authorize civil forfeiture:

- 30-01-09 Jurisdiction
- 30-01-10 Classification of Misdemeanors

- 30-01-11 Civil Actions against Non-Indians (retitled)
- 30-01-12 Disposition of Fines and Civil Penalties, Property Seizure, and Forfeiture (retitled)

and retitling Title 30 to “Public Safety,”  
and creating Title 5, titled “Land Use and Leasing,”  
and adopting the following provision

- 05-02 – Civil Trespass

Tribal Council adopted Resolution No. 2024-001 on January 11, 2024, amending Sec. 04-06-05 by exempting the Isleta Public Housing Authority from the Pueblo of Isleta Design/Construction Tax.

## **ISLETA LAW & ORDER CODE**

### **TITLE 01 ISLETA JUDICIARY AND CIVIL ACTIONS**

#### **01-01 RETAINED SECTIONS OF 1965 LAW AND ORDER CODE**

##### **01-01-17 Law Applicable to Civil Actions**

A. In all civil cases, the Pueblo of Isleta Judiciary shall apply applicable Pueblo of Isleta Ordinances or customs, unless prohibited by the laws of the United States, in which case such laws shall apply.

B. Where any doubt arises as to the customs and usages or the Tribe, the Judiciary may request the advice of counsellor familiar with these customs and usages.

C. Any matters that are not covered by the ordinances and customs of the Pueblo of Isleta or by the laws of the United States, shall be decided by the Pueblo of Isleta Judiciary according to the laws of the State of New Mexico.

##### **01-01-18 Judgments in Civil Actions**

A. In all civil cases, judgment shall consist of any order of the Judiciary awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.

B. Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.

C. Where the injury was deliberately inflicted, the judgement may impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the Tribe.

##### **01-01-19 Costs in Civil Actions**

The Judiciary may assess the accruing costs of the case against the party or parties against who judgment is given.

##### **01-01-20 Determination of Paternity and Support**

The Pueblo of Isleta Judiciary shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of a child. A judgment of the

Judiciary establishing the identity of the father of the child shall be conclusive of the fact in all subsequent determinations of inheritance by the Pueblo of Isleta Judiciary.

*See Ordinance on Paternity Determinations, enacted September 25, 2012 by Resolution 2012-034A.*

#### **01-01-21      Determination of Heirs**

A. When any member of the Tribe does leaving property other than an allotment or other trust property subject to the jurisdiction of the United States, any member claiming to be an heir of the of the decedent may bring a suit in the Pueblo of Isleta Judiciary to have the Judiciary determine the heirs of the decedent and to divide amount the heirs such property of the decedent. No determination of heirs shall be made unless all the possible heirs know to the Judiciary and to the claimant have been notified of the suit and given full opportunity to come before the Judiciary and defend their interests. Possible heirs who are not residents of the reservation under the jurisdiction of the Judiciary must be notified by mail and a copy of the notice must be preserved for the record of the case.

B. In the determination of heirs the Judiciary shall apply the custom of the Tribe as to inheritance if such custom is proved. Otherwise, the Judiciary shall apply the law of the State of New Mexico in deciding what relatives of the decedent are entitled to be his heirs.

C. Where the estate of the decedent includes any interest in restricted allotted lands or other property held I trust by the United States, over which the examiner of inheritance would have jurisdiction, the Pueblo of Isleta Judiciary may distribute only such property as does not come under the jurisdiction of the examiner of inheritance.

*See Probate Ordinance, approved by Tribal Council June 10, 2014. (12-0-0) Effective October 8, 2015.*

#### **01-01-22      Approval of Wills**

*Repealed by Probate Ordinance, approved by Tribal Council June 10, 2014. (12-0-0) Effective October 8, 2015.*

#### **01-01-70      Statute of Limitations – Criminal**

No person shall hereafter be prosecuted, tried or punished in any court of the Isleta Pueblo Judiciary unless the criminal complaint shall be made or warrant issued within one (1) year from the time the crime was committed. If, after an offense has been committed, the defendant shall conceal himself or go outside the exterior boundaries of Isleta Pueblo, the prosecution for such crime may be commenced within the time prescribed herein after defendant ceases to conceal himself or returns to the lands of the Pueblo of Isleta. No period shall be included in the time of limitation when the party charged with a crime is not usually and publicly a resident of the Pueblo of Isleta.

## **01-01-71 Statute of Limitations – Civil**

No civil suit or action may be brought after five (5) years from the date on which its cause of action arises.

*This section does not apply to Probate proceedings authorized by the Probate Ordinance. See Section 6.4 of Probate Ordinance, approved by Tribal Council June 10, 2014. (12-0-0) Effective October 8, 2015.*

## **01-02 PERSONAL INJURY ACTIONS**

### **01-02-01 Applicability**

A. This chapter shall apply broadly to any civil actions filed in Isleta Tribal Court seeking reimbursement for personal injury or property damage, where the term “personal injury” shall be construed broadly to include any action alleging any physical injury, mental injury, loss of life, or property damage proximately caused by a party’s failure to meet its requisite duty and standard of care, and shall include but not be limited to such actions relating to:

1. Auto accident injury;
2. Medical malpractice;
3. Product liability;
4. Slip and fall accidents;
5. Workplace injury;
6. Wrongful death.

B. Nothing in this chapter shall be construed as a waiver of sovereign immunity by the Pueblo of Isleta or any of its departments or entities, including the Isleta Health Center, Tiwa Lending, Isleta Public Housing Authority, the C-Stores, and Isleta Resort and Casino. Any such waiver shall apply only if explicitly adopted under the Pueblo of Isleta Governmental Claims Act.

### **01-02-02 Collateral Source Benefits**

A. For any actions in which a plaintiff seeks to recover for the costs of medical care, custodial care or rehabilitation services, loss of earnings or other economic loss, on motion by a defendant or *sua sponte*, the court or jury shall hear evidence of any amount of such damages incurred which the defendant claims was replaced, compensated or

indemnified pursuant to the United States Social Security Act, any state or federal income-disability act, any health, sickness or income-disability insurance, any accident insurance that provides health benefits or income-disability coverage, any contract or agreement of any group, organization, partnership, or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services, any contract or agreement to continue to pay, in whole or in part, the plaintiff's wages or income, or any other collateral source of benefits whatsoever, except for gratuitous payments or gifts. If the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount the plaintiff himself paid or contributed to secure his right to the benefits concerning which the defendant has introduced evidence.

B. If the court or jury finds that any such cost or expense was replaced, compensated, or indemnified from any collateral source, it shall reduce the amount of the award by such finding, minus an amount equal to the premiums or other amounts paid by the plaintiff for such benefits for the one-year period immediately preceding the accrual of such action; provided that, if the plaintiff has received compensation or indemnification from any collateral source whose right of subrogation is based in any federal law, the court shall not reduce the award by the amounts received prior to judgment from such collateral source and such amounts may be recovered in accordance with such federal law.

C. During the pendency of any such action, if a plaintiff has a policy of insurance which provides health benefits or income disability coverage, and the plaintiff is unwilling or unable to pay the costs of renewing or continuing that policy of insurance in force, the defendant or defendants may tender to the plaintiff the cost of maintaining the said policy in force. Upon receipt of such tender, the plaintiff shall continue such policy of insurance in force. Nothing in this subsection shall be construed to compel a plaintiff to renew or maintain any policy of insurance in force prior to receipt of the said tender, or to interfere in any way with the plaintiff's choice of physician or course of medical treatment.

D. To the extent the New Mexico Human Service Department has provided public assistance benefits to the plaintiff, nothing in this section shall be construed to affect said department's right of subrogation or right to a lien against any judgment or settlement, nor shall a court reduce an award by the amount of public assistance benefits provided by said department.

E. If a claim is properly filed under the Pueblo of Isleta Governmental Claims Act and the Pueblo of Isleta has elected to purchase liability insurance under this act, the court may be advised of the insurance.

#### **01-02-03      Contributory Negligence**

Any contributory negligence chargeable to the claimant shall diminish proportionately the amount awarded as damages for an injury attributable to the claimant's contributory negligence but shall not bar recovery, except that if the contributory negligence of the

claimant is equal to or greater than the total negligence of defendants, the claimant shall be totally barred from recovery.

**01-02-04      Jury Trial**

The right to a trial by jury for any personal injury action is preserved and may be requested by either party or directed by the court *sua sponte*.



**TITLE 02**  
**PUEBLO OF ISLETA GOVERNMENT**

**02-01**  
**PUEBLO OF ISLETA GOVERNMENTAL CLAIMS ACT**

**02-01-01      Short Title**

This chapter shall be known and cited as the Pueblo of Isleta Governmental Claims Act.

**02-01-02      Definitions**

A.      As used in this act:

1. “Employees” shall mean officials, employees, appointees, and volunteers duly authorized by the Pueblo of Isleta to perform authorized functions.
2. “Pueblo of Isleta” means any entity under the operational control of the Pueblo of Isleta government, including but not limited to all executive branch departments, Tribal Council, all boards and commissions, the judiciary, Isleta Health Center, Isleta C-Stores, Isleta Resort and Casino, Isleta Public Housing Authority, and Tiwa lending.
3. “Standard of care” means the reasonably prudent person’s standard of care, given their duty and relationship to whom they are alleged to owe such standard of care, as defined by Isleta Traditional Law. The Pueblo of Isleta Governmental Claims Act in no way imposes a strict liability. Any determination of the standard of care required in any particular instance should be made with the knowledge that the Pueblo of Isleta, its entities, and its subdivisions have financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities.
4. “This act” when used within this chapter shall mean the Pueblo of Isleta Governmental Claims Act.

**02-01-03      General Principles of Sovereign Immunity**

A.      The Pueblo of Isleta is a sovereign nation which is inherently immune from suit. Sovereign immunity is an inherent attribute of the Pueblo of Isleta as a sovereign nation and is neither judicially created by any court, including the Courts of the Pueblo of Isleta, nor derived from nor bestowed upon the Pueblo of Isleta by any other nation or government.

B.      Neither the Governor nor his Lieutenants nor the members of the Pueblo of Isleta Council may be subpoenaed or otherwise compelled to appear or testify in the courts of

the Pueblo of Isleta or any proceeding which is under the jurisdiction of the courts of the Pueblo of Isleta concerning any matter involving such official's actions pursuant to his/her official duties, unless the protections of sovereign immunity have been explicitly waived under the Pueblo of Isleta Constitution or specific Tribal Law, including this act.

**02-01-04      Authorizing Exceptions to Sovereign Immunity**

A.      The purpose and intent of the Pueblo of Isleta Governmental Claims Act is to balance the interest of the individual parties in obtaining just redress to which they are entitled under the law in accordance with the orderly process of the Pueblo of Isleta government, while at the same time protecting the legitimate public interest in securing the purpose and benefits of their public funds and assets, and the ability of their government to function without undue interference in furtherance of the general welfare of the Pueblo of Isleta and its members.

B.      The Pueblo of Isleta may be sued in Pueblo of Isleta Tribal Court when explicitly authorized by applicable federal law, as long as such action is filed in accordance with this act.

C.      The Pueblo of Isleta may be sued in Pueblo of Isleta Tribal Court when explicitly authorized by Resolution or Law adopted by the Isleta Tribal Council, as long as such action is filed in accordance with this act.

D.      The Isleta Resort and Casino may be sued in the Pueblo of Isleta Tribal Court for claims of bodily injury or property damage proximately caused by the conduct of the Isleta Resort and Casino, in violation of its standard of care, as long as such action is filed in accordance with this act.

E.      Judicial review of Pueblo of Isleta administrative actions under the Government Accountability Act is permitted, pursuant to the limitations of the Government Accountability Act, as long as such action is filed in accordance with this act.

F.      Any exception to the immunity of the Pueblo of Isleta and assumption of liability pursuant to this act does not apply in circumstances in which such liability has been or is hereafter assumed by third parties, including private entities, individuals, or any federal or state governmental body or agency, nor for which the Pueblo of Isleta has been or is hereafter indemnified or held harmless by such parties, to the extent of such assumption or indemnification of liability.

G.      Unless an insurance carrier or a federal entity otherwise provides a defense for a claim, the Pueblo of Isleta Legal Department shall provide a defense, including a defense of immunity, for any official or employee of the Pueblo of Isleta, when such official or employee is alleged to have committed an act or omission in the course of the official's or employee's scope of duty which proximately caused bodily injury, property damage, or a violation of rights.

1. Notwithstanding this Subsection, the Pueblo of Isleta shall have the right to recover from an employee defended under this subsection the amount expended by the Pueblo of Isleta to provide a defense, if it is shown that the employee's actions or omissions giving rise to a cause of action under this act were outside of the official or employee's scope of duty or were committed fraudulently or with actual intentional malice.
2. The duty to defend employees under this subsection shall continue after employment with the Pueblo of Isleta has been terminated if the occurrence for which such claim is filed happened while the employee was acting within the scope of duty while the employee was in the employ of the Pueblo of Isleta.

H. A judgment in an action or a settlement under this act constitutes a complete bar to any other action by the claimant by reason of the same transaction or occurrence which was the subject matter of the original suit or claim against the Pueblo of Isleta, whose alleged action or omission gave rise to the claim.

I. Original and exclusive jurisdiction for any claim under this act shall be in the Isleta Tribal Court. Appeals may be made to the Isleta Appellate Court.

J. The right to a trial by jury for any claims filed under this act is preserved and may be requested by either party or directed by the Court *sua sponte*.

#### **02-01-05 Procedure for Actions Authorized by this Act**

A. No action shall be brought against the Pueblo of Isleta unless a pre-suit claim upon which the action is based is first presented in writing to the appropriate Pueblo of Isleta entity and official.

B. The pre-suit claim shall:

1. State the time, place and circumstances of the alleged loss or injury including the name of the public employee involved, if known;
2. State the name, address and residence of the claimant and his representative or attorney, if any;
3. State the amount of compensation or other relief demanded;
4. Be signed by the claimant with the statement: "This Claim is true and correct to the best of my knowledge and belief and is made under penalty of perjury;"

5. Provide the Pueblo of Isleta with a minimum of thirty (30) calendar days to respond; and
  6. Be served on the department or entity against whom the complaint is made, as well as on the Pueblo of Isleta Governor and Pueblo of Isleta Legal Department, either through personal service or through registered mail.
- C. In any action under this act, the complaint shall include evidence that the pre-suit claim procedure required herein was followed by plaintiff. The pre-suit claim process is a jurisdictional condition precedent to any action against the Pueblo of Isleta.

## **TITLE 04 TAXATION**

### **04-01 PUEBLO OF ISLETA ENTERPRISE SALES TAX**

#### **04-01-01 Short Title**

The Tax imposed by this Chapter shall be known as and may be cited as the "Pueblo Enterprise Sales Tax" of the Pueblo of Isleta.

#### **04-01-02 Purpose**

The purpose of this Chapter is to impose a tax on Taxable Sales of Pueblo Enterprises, as hereinafter defined. It is the finding of the Tribal Council that a tax should be collected on Taxable Sales by Pueblo Enterprises, in order to ensure that each such transaction shall contribute tax revenues necessary and appropriate to support the governmental services provided by the Pueblo and for other general purposes to be determined by the Pueblo's Tribal Council.

#### **04-01-03 Definitions**

For the purpose of this Chapter, the following definitions shall apply:

- A. Tax Administration Division: The Pueblo's Tax Administration Division established pursuant to Ordinance 86-55 (as amended).
- B. Gaming Transaction: Any transaction consisting of a bet by a customer on a game of chance seeking a jackpot or prize, including without limitation, any bet on a slot machine, table game, keno, horse or dog racing or other game of chance, and any players club award, promotional giveaway or other marketing transaction, excluding redemption of Isleta Rewards Players Club points for non-gaming goods or services.
- C. Gross Sales Proceeds: The total amount of money, property or other consideration of monetary value, including Isleta Rewards Players Club Points, received by a Pueblo Enterprise from Taxable Sales, including any receipts from sales of tangible property handled on consignment, but excluding (a) cash discounts allowed and taken, and (b) the amount of any Pueblo Lodger's Tax assessed on a transaction. Any transaction by which a Pueblo enterprise provides a good or service on a complimentary or discounted basis shall not be deemed to produce taxable Gross Sales Proceeds to the extent the customer does not pay consideration having monetary value, notwithstanding that the Pueblo Enterprise providing the complimentary good or service may charge, or receive credit from, the Pueblo or another Pueblo Enterprise for internal accounting and similar purposes.

D. Leased Property: Any grant of a right of possession and use of real or personal property within the Reservation, including banquet, meeting or similar facilities thereon, but excluding any lease of real property or improvements thereon with a term in excess of thirty (30) days.

E. Pueblo: The Pueblo of Isleta.

F. Pueblo Enterprise: An unincorporated enterprise of the Pueblo, and any other entity in which the Pueblo owns not less than 51% of the capital and profits interests, that engages in commerce on the Reservation.

G. Purchaser: Any person that purchases property or services, or leases property, from a Pueblo Enterprise on the Reservation.

H. Reservation: All lands within the exterior boundaries of the Pueblo, any lands now or hereafter held in trust for the Pueblo's benefit by the United States and any other Indian Country over which the Pueblo exercises sovereign governmental authority.

I. Sale: A transaction in which a Pueblo Enterprise (i) sells property, (ii) leases property, (iii) provides services on the Reservation to a Purchaser for consideration with a monetary value.

J. Taxable Sale: Any Sale by a Pueblo Enterprise, other than a Sale exempted from the tax by 04-01-05.

#### **04-01-04 Imposition of Tax**

There is hereby imposed a Pueblo Enterprise Sales Tax of 5.8125% of Gross Sales Proceeds from all Taxable Sales by Pueblo Enterprises on and after July 1, 2008. The Enterprise Sales Tax is a tax on the Taxable Sale transaction and the responsibility and liability for collecting the tax on each Taxable Sale shall lie with the Pueblo Enterprise acting as the seller. The Pueblo Enterprise acting as the seller shall pass-through the financial burden of the tax to the Purchaser and shall require the Purchaser to pay such tax contemporaneously with the payment of the consideration for the Taxable Sale.

#### **04-01-05 Exemptions**

The following Sales of a Pueblo Enterprise shall not constitute Taxable Sales and the Pueblo Enterprise's receipts from such Sales shall not constitute Gross Sales Proceeds subject to tax:

A. A Gaming Transaction and any proceeds thereof;

B. Sales of gasoline on which the tax imposed by the Pueblo of Isleta Gasoline Tax Ordinance, as adopted on July 6, 1999, and now codified as Chapter 3 of the Pueblo's Tax Ordinance, has been paid and not refunded;

C. Sales of special fuel or alternative fuel on which the tax imposed by Section 7-16A-3 or 7-16B -3, NMSA 1978, has been paid and not refunded;

D. Sales in which the Purchaser is the Pueblo, any governmental unit, subdivision, agency, department or instrumentality thereof, another Pueblo Enterprise, an enrolled member of the Pueblo, the United States of America and its agencies, departments and instrumentalities, or the State of New Mexico and its agencies, departments and instrumentalities;

E. Sales satisfactorily documented by the Purchaser as being made to or for the account of a federally recognized Indian tribe, tribal organization formed by a recognized tribe, an inter-tribal organization among recognized tribes, or an organization recognized as exempt from federal income tax by the U.S. Internal Revenue Service pursuant to Section 501(c)(3) of the Internal Revenue Code; and

F. Sales (i) to a person engaged in manufacturing on the Reservation and for use in such manufacturing, (ii) of personal property or services for resale within the Reservation by the Purchaser, if actually resold, (iii) of tangible personal property and licenses for leasing by the Purchaser within the Reservation, if actually leased, (iv) consisting of leasing property for subsequent subleasing by the Purchaser within the Reservation, if actually subleased, and (v) of tangible personal property to be used for construction within the Reservation, if actually used for such construction; provided that the Purchaser delivers in writing to the Pueblo Enterprise acting as the seller a certificate verifying the exempt nature of the Sale and committing to pay to the Pueblo the tax on said transaction, if the purchaser does not use the property, services or leased item as represented.

#### **04-01-06 Determination of Exemption; Appeal**

If there is any dispute between the Pueblo Enterprise and the Purchaser concerning whether a transaction constitutes a Taxable Sale, the Tax Administration Division shall make the determination regarding whether or not a Sale is a Taxable Sale under this Chapter. In the event that the Purchaser is dissatisfied with any decision of the Tax Administration Division with respect to an exemption, the Purchaser may appeal the decision of the Tax Administration Division.

#### **04-01-07 Collection of the Enterprise Sales Tax**

A. Every Pueblo Enterprise making Taxable Sales within the Reservation shall collect the Pueblo Enterprise Sales Tax thereon from the Purchaser on behalf of the Pueblo and shall act as trustee therefore.

B. The Pueblo Enterprise Sales Tax shall be collected from Purchasers contemporaneously with the payment of the purchase consideration for such Taxable Sale in accordance with this Chapter. The amount of Pueblo Enterprise Sales Tax due on a transaction may be stated and charged separately from the purchase price charged for

such Sale on any statement presented by the Pueblo Enterprise to the Purchaser, or may be included as part of the purchase price without segregation on the statement presented to the Purchaser; provided that the Pueblo Enterprise shall properly differentiate the tax from the consideration for the Sale on its books and records.

C. The Pueblo Enterprise shall report and remit the Pueblo Enterprise Sales Tax due on the Taxable Sales of such Pueblo Enterprise to the Tribal Treasury, on such schedule, and in accordance with such reporting forms and procedures as may be directed by the Pueblo's Treasurer. The report of the Pueblo Enterprise shall also list and attach documentary evidence in support of any Sale claimed to be exempt pursuant to Section 04-01-05. A copy of all Pueblo Enterprise Tax reports made by the Pueblo Enterprise shall be made available to the Tax Administration Division, upon request, for the purpose of ensuring compliance with and enforcement of the Pueblo Enterprise Sales Tax.

## **04-02 PUEBLO OF ISLETA CIGARETTE TAX**

### **04-02-01 Short Title**

The tax imposed by this Chapter shall be known as and may be cited as the "Cigarette Tax" of the Pueblo of Isleta.

### **04-02-02 Purpose**

The purpose of this Chapter is to protect and promote the Pueblo of Isleta's sovereignty and right of self-governance through the taxation and regulation of sales and distribution of cigarette and tobacco products within the Pueblo of Isleta; to protect and promote its unique tribal cigarette market, individual tribal member owned businesses and tribal owned outlets; and to generate reasonable and reliable revenues to conduct essential governmental functions which benefit all tribal members and residents,

### **04-02-03 Applicability**

This Chapter applies to all persons selling cigarettes or tobacco products in any quantity within the Pueblo of Isleta; provided that nothing in this Chapter shall be construed as regulating in any way, the use, consumption, trading, sale or giving away of traditional tobacco within Pueblo Lands.

### **04-02-04 Definitions**

As used in this Chapter:

- A. "Business Day" means Monday through Friday, excluding holidays and weekends. If a due date falls on a legal holiday or weekend, then the due date shall be the next business day following the holiday or weekend.
- B. "Business Permit" means the permit issued by the Pueblo pursuant to the Pueblo of Isleta Business Permit Policy. The permit authorizes the holder to receive and sell cigarettes and tobacco products on or from Pueblo Lands.
- C. "Carton" means the package or container of cigarette packs, typically containing ten



- (10) cigarettes packs, but could contain more or less.
- D. "Cigarette" means any roll of tobacco or substitute for tobacco wrapped in paper.
- E. "Cigarette Tax" means the tax imposed by this Chapter on the cigarettes sold on or from Pueblo Lands.
- F. "Distributor" means any person or business that ships, transports, or imports cigarettes and/or tobacco products onto Pueblo Lands or in any manner acquires or possesses cigarettes and/or tobacco products for wholesale or resale purposes.
- G. "Effective Date" means the date on which the Chapter is approved by the United States Secretary of the Interior and becomes law pursuant to the Pueblo's Constitution.
- H. "Minor" means any individual under eighteen (18) years of age.
- I. "Pack" means any package of cigarettes, typically containing twenty (20) or twenty-five (25) cigarettes, but could contain fewer cigarettes. The definition does not include a carton.
- J. "Permittee" means any person who has been issued and is the holder of a Pueblo of Isleta Business Permit.
- K. "Person" means any person or entity, including any individual, business, partnership, corporation, association, organization, or other legal entity of any kind.
- L. "Pueblo" means the Pueblo of Isleta.
- M. "Pueblo Lands" means all lands within the exterior boundaries of the Pueblo of Isleta, and lands now or hereafter held in trust for the Pueblo's benefit by the United States and any other Indian Country over which the Pueblo exercises sovereign governmental authority.
- N. "Retailer" means any person or business that sells cigarettes and/or tobacco products at retail to a consumer and the sale is not for resale.
- O. "Tax Administration Division" means the Pueblo's Tax Administration Division established pursuant to Ordinance 86-55 (as amended).
- P. "Taxpayer" means a person who pays the Cigarette Tax, or who is subject to and liable for the collection and payment of the Cigarette Tax."
- Q. "Tobacco Products" means any product, other than cigarettes, made from or

containing tobacco.

- R. "Tobacco Product Compliance Directory" means the directory compiled and maintained by the New Mexico Attorney General's Office that lists the brand names and families of tobacco products that are compliant or non-compliant with the Tobacco Model Escrow Statute, NMSA §6-4-12 and §6-4-13, and the Tobacco Escrow Fund Act, NMSA §6-4-14 through §6-4-24.
- S. "Traditional Tobacco" means twist or leaf tobacco traditionally used by Tribal members or other Native American individuals.
- T. "Tribal Member" means any individual who is an enrolled member of the Pueblo of Isleta.
- U. "Tribal Court" means the Tribal Court of the Pueblo of Isleta.
- V. "Tribal Council" means the Tribal Council of the Pueblo of Isleta.

#### **04-02-05 Cigarette Tax**

- A. Tax Imposed; Taxable Event. For the privilege of selling cigarettes on Pueblo Lands, there is hereby levied and imposed the following tax upon every Retailer or Distributor of cigarettes:

\$0.75 per pack of cigarettes received by the Retailer or Distributor on Pueblo Lands.

- B. Review of Rate. The Tribal Council shall review the tax rate annually each April, or at such other times as deemed necessary, to determine if the rate shall be adjusted.
- C. Incidence of Tax. The legal incidence of the tax imposed by this Chapter shall be on Retailers and Distributors selling or distributing cigarettes on Pueblo Lands.
- D. Liability for Collection and Payment of Tax. Retailers and Distributors within Pueblo Lands are responsible for the collection and payment of the tax imposed by this Chapter, regardless of whether the taxes are passed on to the next purchaser in the cost of the product.
- E. Exemption for Resale Off of Pueblo Lands by Distributors. Cigarettes that are received by Distributors within Pueblo Lands for resale on the lands of another tribe are exempt from the tax, provided that (1) the sale must be to a person licensed by that

other tribe to sell cigarettes within its jurisdiction, and (2) the sale of the cigarettes on the land of the other tribe must be subject to a qualifying tribal cigarette tax, as defined under Section 7-12-2(K) of the New Mexico Cigarette Tax Act, imposed by that tribe. Distributors may deduct from his or her return those cigarettes sold to licensed vendors on another qualifying tribe's land. Distributors are still required to pay tax on those cigarettes that are received on Pueblo Lands and are sold to other Isleta vendors located within Pueblo Lands.

- F. Tribal Tax Previously Paid on Product. A Retailer or Distributor may deduct from his or her return those cigarettes upon which the Cigarette Tax has been reported and paid pursuant to this Chapter by the Distributor on Pueblo Lands from whom they purchased the cigarettes.
- G. Exemption from Tribal Sales Tax. Cigarettes upon which the Cigarette Tax has been imposed and collected pursuant to this Chapter shall be exempt from the Pueblo of Isleta Enterprise Sales Tax.
- H. Traditional Tobacco Exempt. Nothing in this Chapter shall be construed as regulating or taxing in any way the use, consumption, sale, or giving away of traditional tobacco on or from the Pueblo Lands.

#### **04-02-06 Reporting and Payment of Tax**

All taxes imposed by this chapter are due and payable on or before the fifteenth (15<sup>th</sup>) day of the second calendar month following the month in which the cigarette taxes accrue. For example, taxes on cigarettes received in January are due on or before March 15. If the fifteenth (15<sup>th</sup>) day falls on a legal holiday or weekend, then the due date shall be the next business day. Every person subject to the Cigarette Tax shall complete and file with the Tax Administration Division a return for the taxable month on a form provided by the Tax Administration Division providing such information as required. The return shall be accompanied by a payment of the amount of the Cigarette Tax due. The return shall be signed by the Taxpayer or an authorized agent of the Taxpayer.

#### **04-02-07 Retention of Invoices and Records**

- A. Record of Receipt of Cigarettes. Every Retailer and Distributor within Pueblo Lands who is subject to the Cigarette Tax shall maintain copies of all invoices or other documents from the seller with respect to receipt of cigarettes on Pueblo Lands by such Retailer or Distributor. The invoices or documents shall indicate date of purchase, the quantity of cigarettes purchased, the price paid and the name and address of the seller.
- B. Record of Sale of Cigarettes. Every Distributor who sells cigarettes on or from Pueblo Lands for resale shall maintain copies of all invoices and records showing

such person's sales. The invoices shall indicate the date of sale, the quantity of cigarettes, the price paid, and the name and address of the buyer.

- C. Taxpayer Records. Every Taxpayer shall maintain accurate and complete records relevant to reporting and payment of cigarette taxes.
- D. Maintaining Records. Such invoices and records shall be maintained for a period of not less than three (3) years from each receipt and/or sales transaction or tax payment.

#### **04-02-08. Business Permit Requirements**

- A. Generally. Every person who receives or sells cigarettes or tobacco products in any quantity on or from Pueblo Lands must hold a valid Business Permit issued by the Pueblo for each business location on Pueblo Lands where cigarettes or tobacco products are received or sold.
  - i. The Pueblo's grant of a Business Permit to engage in the business of selling cigarettes or tobacco products on or from Pueblo Lands conveys upon the Permittee an exemption from the imposition of the State of New Mexico Cigarette Tax on such sales transactions. *See*, NMSA §7-12-4.
- B. No Exemptions for Certain Businesses. All businesses that sell any quantity of cigarettes or tobacco products must apply for a Business Permit, and pay the fee, even if the primary purpose of the business is not cigarette or tobacco products sales, and would otherwise be exempt from the Business Permit fee based on the category of business such as Indian arts and crafts, agriculture, or food sales.
- C. Application and Fees. An applicant for a Business Permit shall apply in writing on a form provided by the Pueblo setting forth such information as required and pay such fees in accordance with the Pueblo of Isleta Business Permit Policy or such other regulations or policies as may be adopted.
- D. Delinquent Taxes. No Business Permit shall be issued or renewed if the applicant owes delinquent cigarette taxes until such taxes are paid in full.
- E. Non-Transferable and Location Specific. A Business Permit issued to a person subject to this Chapter shall not be transferred, sold or assigned except in accordance with the Business Permit Policy or other regulations or policies and is only valid for the business location specified in the application and on the Business Permit itself.

- F. Requirements. All persons issued a Business Permit who are subject to this Chapter shall:
- i. conspicuously display the license in the business location;
  - ii. be responsible for the entire operation of selling cigarettes and tobacco products on or from Pueblo Lands, the reporting and payment of all cigarette taxes and permit fees, and for the conduct of his or her officers, agents, and employees in relation thereto;
  - iii. not expand their business operation pertaining to cigarette and tobacco product sales beyond what was described in their application and upon which the permit was issued.
  - iv. comply with all laws and regulations of the Pueblo, including the Pueblo of Isleta Business Permit Policy, and applicable federal laws and regulations regarding the sale and distribution of cigarettes and tobacco products.
    1. It is the responsibility of the Permittee to review the Tobacco Product Compliance Directory to determine which cigarette and tobacco products are compliant and are acceptable to *be* sold on or from Pueblo Lands pursuant to this Chapter.
  - v. expressly consent to the civil jurisdiction of the Tribal Court for any matter arising pursuant to this Chapter, the Business Permit Policy or other applicable law or regulation.
- G. Revocation of Permit. In addition to any enforcement action against a Business Permit holder pursuant to the Pueblo of Isleta Business Permit Policy and such other civil or criminal penalties imposed pursuant to this Chapter consistent with federal law, the Tax Administration Division may take such action to cause the revocation of a Business Permit for:
- i. any material misstatement of facts in the Business Permit application regarding the sale or distribution of cigarettes or tobacco products on or from Pueblo Lands;
  - ii. any material misstatement of facts in a record, report, inventory, invoice, or other document required to be kept and/or filed with the Tax Administration Division by this Chapter;
  - iii. any violation of this Chapter or any regulation promulgated hereunder, or any order issued pursuant to this Chapter, including the non-payment or

continued delinquent payment of taxes on more than one occasion;

iv. any violation of any applicable federal or Pueblo law or regulation.

H. Notice of Permit Revocation. Upon any such revocation, the Tax Administration Division shall notify the New Mexico Taxation and Revenue Department and all suppliers known to provide cigarettes to Retailers and Distributors on Pueblo Lands that the person whose Business Permit is revoked is no longer tribally licensed and authorized to purchase cigarettes without payment of the State of New Mexico Cigarette Tax.

I. Additional Restrictions or Limited Number of Permits. The Tribal Council reserves the right to impose additional restrictions on existing Business Permits or limit the number of Business Permits issued for sale or distribution of cigarettes or tobacco products under this Chapter when, in the Tribal Council's discretion, it is in the public's interest or welfare.

J. Other Licenses or Permits. The Tribal Council reserves the right to require a separate license or permit for the sale or distribution of cigarettes or tobacco products, in lieu of or in addition to, the Business Permit described herein.

#### **04-02-09 Prohibited Activities**

It shall be a civil offense for any Person subject to this Chapter to:

- A. sell cigarettes or tobacco products in any quantity on or from Pueblo Lands without holding a valid Business Permit or other license that may be required by the Pueblo;
- B. sell cigarettes or tobacco products on or from Pueblo Lands at a location not authorized by the Business Permit;
- C. sell cigarettes or tobacco products on or from Pueblo Lands in any manner not authorized by the Business Permit, such as, but not limited to, expansion of the business operation or change in business structure, without proper notice to the Pueblo;
- D. sell cigarettes or tobacco products on or from Pueblo Lands to a minor;
- E. sell or distribute cigarettes or tobacco products on or from Pueblo Lands that are listed as non-compliant or contraband on the Tobacco Product Compliance Directory maintained by the State of New Mexico Attorney General's Office;
- F. fail to report, report accurately and/or timely pay the Cigarette Tax;  
fail to report delivery, distribution or sales of cigarettes on or from Pueblo Lands;
- G. fail to retain invoices and records required by this Chapter;
- H. fail to cooperate with the Tax Administration Division, or its agent, in its conduct of its duties under this Chapter;

- I. violate this Chapter and any regulations adopted hereunder.

#### **04-02-10 Audit Authority**

The Tax Administration Division, through its designated agent, shall be authorized and empowered to

- A. enter onto the business premises of any Permittee to conduct an inventory of any stock of cigarettes in the possession of the Permittee at any time during business hours of such Permittee with prior notice;
- B. conduct audits of, and inspect, Permittee invoices and records regarding cigarette purchases and sales on or from Pueblo Lands, with at least one week's prior written notice;
- C. contact any cigarette or tobacco products supplier or distributor to verify quantities of cigarettes sold and delivered to any Permittee;
- D. issue administrative subpoenas for any records, information, or testimony necessary or appropriate to determine compliance of any person with the terms of this Chapter.

#### **04-02-11 Civil Enforcement Authority**

- A. **Seizure and Sale of Products.** Any person found selling cigarettes or tobacco products on Pueblo Lands without a valid Business Permit shall be subject to confiscation of all cigarettes and/or tobacco products found in his or her possession or custody. The Tax Administration Division shall seize and sell all such cigarettes and tobacco products, collecting the Cigarette Tax due, plus fifty percent (50%) from the proceeds thereof as a civil penalty.
- B. **Assessments.** The Tax Administration Division may assess against any person owing taxes under this Chapter:
  - i. the amount of tax underpaid or owed;
  - ii. a fee equal to twenty-five percent (25%) of the amount not paid;
  - iii. interest of one-percent (1%) per month on late payment from the date due until paid.

- C. **Civil Fine.** The Tax Administration Division may impose a civil fine in an amount not to exceed Five Hundred Dollars (\$500.00) on a Permittee for the commission of each prohibited act.
- D. **Other Penalties and Remedies.** The Tax Administration Division may also impose any other penalties and exercise any other rights and remedies prescribed by this Chapter.
- E. **Civil Proceedings.** The Tax Administration Division may enforce the provisions of this Chapter by injunction or otherwise in any civil proceeding maintained in the name of the Pueblo.
- F. **Appeal to Tribal Court; Injunctive Relief.** Any action taken by the Tax Administration Division pursuant to this chapter may be appealed to the Isleta Tribal Court. The Tribal Court may provide injunctive relief to the appealing party and/or to the Tax Administration Division pending decision on such appeal as the Tribal Court determines best preserves the rights of the parties and limits any potential violation of law.

#### **04-01-12 Criminal Penalty**

Any Indian within the jurisdiction of the Tribal Court who is found by the Tribal Court to have knowingly and intentionally sought to evade taxes imposed by this Chapter, or to assist another to evade such taxes, may be punished by a fine not to exceed Five Hundred Dollars (\$500.00) and/or imprisonment for up to ninety (90) days. The Tax Administration Division may bring and prosecute charges of tax evasion in Tribal Court against any person within the Tribal Court's criminal jurisdiction.

#### **04-02-13 Use of Funds**

Taxes, interest and penalties collected by and deposited with the Tax Administration Division pursuant to this Chapter. Such revenues shall first be applied to the costs of administration of the taxes under this Chapter. All revenues received in excess of the administration costs shall be allocated by the Tribal Council, in its discretion, for health, education, the community welfare, and essential governmental purposes, including but not limited to, the payment of debt obligations incurred by the Pueblo in these areas.

#### **04-02-14 Miscellaneous**



- A. Regulations. The Tax Administration Division may promulgate regulations necessary to implement the requirements of this Chapter.
- B. Amendment. This Chapter may be amended by the Tribal Council, subject to all necessary approval requirements. Future amendments of the tax rate in Section 6.03.A. shall not require Secretary review or approval after this Chapter has been initially approved by the Secretary of the Interior, if the tax rate is the only item being amended.
- C. Sovereign Immunity. The Pueblo hereby waives the sovereign immunity of the Tax Administration Division for the express, sole and limited purpose of allowing review of actions and decisions of the Tax Administration Division as provided by this Chapter, provided that such waiver is made only to the extent necessary to subject the Tax Administration Division to suit for the sole purpose of declaring and adjudging rights and obligations under this Chapter and any promulgated regulations and does not waive immunity with respect to suits for monetary damages.
- D. No Adoption of State Law. While this Chapter references certain New Mexico State laws, tax rates or documents, that reference does not adopt or extend New Mexico law or policy within the Pueblo Lands or over the Pueblo or its members and in no way alters any sovereign rights, powers or jurisdictions of the Pueblo of Isleta.

#### **04-03**

### **PUEBLO OF ISLETA LODGER'S TAX**

#### **04-03-01 Short Title**

The Tax imposed by this Chapter shall be known as and may be cited as the "Lodger's Tax" of the Pueblo of Isleta.

#### **04-03-02 Purpose**

The purpose of this Chapter is to impose a tax which will be paid by persons using commercial lodging accommodations within the Reservation to provide revenues to fund governmental services and for other general purposes to be determined by the Pueblo's Tribal Council.

#### **04-03-03 Definitions**

For the purpose of this Chapter, the following definitions shall apply:

- A. Tax Administration Division: The Pueblo's Tax Administration Division established pursuant to Ordinance 86-55 (as amended).
- B. Gross Taxable Room Rent: The total amount of Room Rent paid for Lodging in Taxable Lodging Transactions during the relevant reporting period, but not including any

Pueblo Gross Receipts Tax or Pueblo Enterprise Sales Tax that is paid with respect to such Taxable Lodging Transactions.

C. Guest: A natural person to whom Lodgings are furnished on the Reservation.

D. Host: A Pueblo Enterprise or other person furnishing Lodgings on the Reservation.

E. Lodging: The transaction of furnishing Lodgings by a Host to a Guest who for a Room Rent, uses, possesses, or has the right to use or possess any Lodgings in or at a Taxable Premises.

F. Lodgings: The rooms or sleeping accommodations furnished by a Host to a Guest at a Taxable Premises, but excluding banquet, ballroom, meeting or convention rooms or space not suitable for sleeping accommodations and related personal use.

G. Lodger's Tax: The tax imposed on Taxable Lodging Transactions by this Chapter.

H. Pueblo: The Pueblo of Isleta.

I. Pueblo Enterprise: An unincorporated enterprise of the Pueblo, and any other entity in which the Pueblo owns not less than 51% of the capital and profits interests, that engages in commerce on the Reservation.

J. Reservation: All lands within the exterior boundaries of the Pueblo, any lands now or hereafter held in trust for the Pueblo's benefit by the United States and any other Indian Country over which the Pueblo exercises sovereign governmental authority.

Room Rent: The consideration received by a Host in money, credits, property, or another medium, valued in money, for Lodgings, including the Isleta Rewards Players' Club. Any transaction by which the Pueblo or a Pueblo Enterprise authorizes a Guest's use of a room on a complementary or discounted basis shall not be deemed to constitute Room Rent, to the extent of such free or discounted use, notwithstanding that the Host may charge, or receive credit from, the Pueblo or another Pueblo Enterprise for internal accounting and similar purposes.

K. Taxable Premises: A hotel, lodge, lodging house, rooming house, motor hotel, guest house, bed and breakfast, guest ranch, ranch resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used for Lodging within the Reservation and containing more than three Lodging units.

L. Taxable Lodging Transaction: Each transaction by which a Host provides Lodgings to a Guest at a Taxable Premises on the Reservation, other than in a transaction exempted by Section 04-03-06 of this Chapter.

#### **04-03-04 Notice and Registration**

Any person, other than a Pueblo Enterprise, who intends to offer lodging at a Taxable Premises within the Reservation shall notify the Tax Administration Division prior to engaging in any Lodging transaction and register with the Tax Administration Division on such form as the Tax Administration Division may require. Pueblo Enterprises shall not be required to register with the Tax Administration Division, but shall collect the Lodger's Tax from Guests.

#### **04-03-05 Imposition of Tax**

There is hereby imposed a Lodger's Tax of 6% of Gross Taxable Room Rent for Lodging paid to Hosts on and after July 1, 2008. The Lodger's Tax is a tax on the Taxable Lodging Transaction and the responsibility and liability for collecting the tax on each Taxable Lodging Transaction shall lie with the Host participating in such transaction. The Host shall pass-through the financial burden of the tax to the Guest and require the Guest to pay such tax as provided at Section 4.08.B. below.

#### **04-03-06 Exemptions**

The Lodger's Tax shall not apply to the following Lodging transactions:

- A. If the Lodging Transaction is with a Guest who:
  - i. has been a permanent resident of the Taxable Premises for a period of at least thirty (30) consecutive days; or
  - ii. enters into or has entered into a written agreement for Lodgings at the Taxable Premises for a period of at least thirty (30) consecutive days;
- B. Lodging at clinics, hospitals, other medical facilities, convalescent homes, or homes for the aged, infirm, indigent or chronically ill;
- C. If the Guest provides evidence that his or her Lodging at the Taxable Premises is associated with the performance of the Guest's official duties with a federally recognized Indian tribe, tribal organization formed by a recognized tribe, an inter-tribal organization among recognized tribes, or an organization recognized as exempt from federal income tax by the U.S. Internal Revenue Service pursuant to Section 501(c)(3) of the Internal Revenue Code and that the Room Rent will be borne or chargeable to said tribe or organization;
- D. If the Guest provides evidence that his or her Lodging at the Taxable Premises is associated with the performance of the Guest's official duties for a unit of the federal or New Mexico State government and that the Room Rent will be borne or chargeable to said unit of government.

#### **04-03-07      Determination of Exemption; Appeal**

The Tax Administration Division shall make the determination of whether or not a Lodging transaction is exempt from the Lodger's Tax. In the event that the Host or Guest is dissatisfied with any decision of the Tax Administration Division with respect to an exemption, the Host or Guest may appeal the decision of the Tax Administration Division.

#### **04-03-08      Collection of the Lodger's Tax**

A. Every Host providing Lodging at a Taxable Premises within the Reservation shall collect the Lodger's Tax with respect to all Taxable Lodging Transactions on behalf of the Pueblo and shall act as trustee therefore.

B. The Lodger's Tax shall be collected from Guests contemporaneously with the payment of Room Rent for each Taxable Lodging Transaction and shall be stated as a charge separate from Room Rent on any statement presented by the Host to the Guest for such transaction.

C. On and after July 1, 2008, each Host shall be liable to the Pueblo for the Lodger's Tax imposed by this Chapter on the Room Rent paid in consideration of each Taxable Lodging Transaction.

D. Each Host, other than a Pueblo Enterprise, shall make a report of Lodger's Tax collected in accordance with this Chapter on or before the twenty-fifth (25<sup>th</sup>) day of each month, or the next business day if such twenty-fifth (25<sup>th</sup>) day is not a business day, on forms provided by the Tax Administration Division, and shall remit therewith payment of the total amount of the Lodger's Tax due to the Pueblo with respect to the prior month. The Host's report shall also list and attach documentary evidence in support of any Lodging Transaction claimed to be exempt from the Lodger's Tax pursuant to Section 04-03-06. The report shall include sufficient information to enable the Tax Administration Division to audit the report and shall be verified on oath by the Host.

E. Each Host that is a Pueblo Enterprise shall report and remit the Lodger's Tax due on the Taxable Lodging Transactions of such Pueblo Enterprise to the Tribal Treasury, on such schedule and in accordance with such reporting forms and procedures as may be directed by the Pueblo's Treasurer. The report of the Pueblo Enterprise shall also list and attach documentary evidence in support of any Lodging Transaction claimed to be exempt from the Lodger's Tax pursuant to Section 04-03-06 of this Chapter. A copy of all Lodger's Tax reports made by the Pueblo Enterprise shall be made available to the Tax Administration Division, upon request, for the purpose of ensuring compliance with and enforcement of this Chapter.

#### **04-03-09      Records of Host**

Each Host shall maintain adequate records of Taxable Premises subject to the Lodger's Tax and of Room Rents received for the use of Lodgings at such premises. The records shall be maintained on the Reservation, shall be open to inspection by the Tax Administration Division, and shall be retained for three years.

## **04-04 PUEBLO OF ISLETA GAS TAX**

### **04-04-01      Definitions**

For purposes of this Chapter:

- A.      “Distributor” shall mean any person who receives gasoline for the purpose of resale within the exterior boundaries of the Pueblo of Isleta.
- B.      “Gasoline” shall mean fuel used primarily for motor vehicles, motor boats, or aircraft, except for diesel engine fuel, kerosene, liquefied petroleum gas, compressed or liquefied natural gas, and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet-type engines.
- C.      “Gasoline Tax” shall mean the tax imposed by this Chapter.
- D.      “Motor Vehicle” shall mean any self-propelled, motorized vehicle or device and includes any connected trailer or semitrailer.
- E.      “Pueblo” shall mean the Pueblo of Isleta.
- F.      Gasoline is “Received” at the time and place it is delivered for resale to a Distributor within the exterior boundaries of the Pueblo.
- G.      “Tax Administration Division” shall mean the Tax Administration Division established pursuant to Ordinance 86-55 (as amended).
- H.      “Tribal Council” shall mean the duly elected and appointed Tribal Council of the Pueblo of Isleta as provided in the Constitution of the Pueblo of Isleta.

### **04-04-02      Rate of Gasoline Tax**

On each gallon of Gasoline Received by a Distributor, a gasoline tax of seventeen cents (\$0.17) per gallon, or an amount equal to that currently imposed by the State of New Mexico pursuant to the New Mexico State Gasoline Tax Act (Article 13, NMSA 1978, as amended), is hereby imposed.

### **04-04-03      Taxable Event**

A. Gasoline received on the Pueblo on and after July 1, 1999. Effective July 1, 1999, each Distributor shall deliver to the Tax Administration Division no later than 4:00 p.m. on the 15th day of each calendar month a written statement showing the total gallons of Gasoline Received by Distributor in the preceding calendar month, together with a check in an amount equal to seventeen cents (\$0.17) times the total gallons of Gasoline Received in the preceding calendar month.

B. Inventory on hand immediately prior to the effective date of any increase in the Gasoline Tax. Each Distributor shall deliver to the Tax Administration Division no later than 4:00 p.m. on the day prior to the date on which an increase in the Gasoline Tax is imposed and becomes effective, a written statement showing the total gallons of Gasoline in the Distributor's inventory as of noon on that day, together with a check in an amount equal to the difference between the previous rate of tax and the new increased rate of tax, expressed in cents per gallon times the total gallons of Gasoline in inventory.

#### **04-04-04 Penalty for Late Payment**

Any Distributor failing to pay the full tax due by the due date shall pay a penalty on the outstanding balance in the amount of two percent (2%) per month for each month the tax remains unpaid.

#### **04-04-05 Deductions**

In computing the Gasoline tax due, the Gasoline delivered into the fuel supply tank of any vehicle licensed as a Pueblo Government vehicle may be deducted from the total amount of Gasoline Received on the Pueblo during the tax period, provided satisfactory proof thereof is furnished to the Tax Administration Division.

#### **04-04-06 Refund of Gasoline Tax**

Upon submission of proof satisfactory to the Tax Administration Division, the Tax Administration Division may allow a claim for refund for tax paid on any Gasoline destroyed by fire, accident, or acts of God while in the possession of a Distributor.

#### **04-04-07 Registration of Distributor**

Each person engaged in the business of selling Gasoline on the Pueblo as a Distributor shall register with the Tax Administration Division.

#### **04-04-08 Amendment**

This Ordinance may be amended by a majority vote of the Tribal Council. The Tax Administration Division shall notify taxpayers of any amendment.

### **04-05**

## **PUEBLO OF ISLETA INTERNET SALES TAX**

#### **04-05-01      Short Title**

This Chapter, which codifies the Cooperative Agreement entered into by the New Mexico Taxation and Revenue Department (the "Department") pursuant to the authority granted by NMSA 1978, § 9-11-12.1 and Pueblo of Isleta pursuant to the authority granted by Pueblo of Isleta Council Resolution No. 2022-026, shall be referred to as the Pueblo of Isleta Internet Sales Tax.

#### **04-05-02      Purpose and Background**

A.      The Department and the Pueblo enter into this Agreement in order to provide for the exchange of information and the reciprocal, joint, or common enforcement, administration, collection, remittance, and audit of gross receipts taxes that are or may be imposed by their respective jurisdictions upon Internet Sales as hereinafter defined.

B.      The enactment of House Bill 6 by the 2019 New Mexico legislature amended the tax laws of the State of New Mexico (the "State") in various respects, including by requiring that, beginning on July 1, 2021, the gross receipts taxes for the sale, leasing, and licensing of certain goods and services would generally be reportable to the location of the delivery of the good or service to the customer, NMSA § 7-1-14, and providing that a person who lacks a physical presence in the State, including a marketplace provider, who has total taxable gross receipts from sales, leases, and licensing of certain goods and services of at least \$100,000, are subject to the State's gross receipts tax laws, NMSA § 7-9-3.3.

C.      The Department and the Pueblo have discussed these changes to the State's tax laws and have recognized that it would be difficult, if not impossible, for taxpayers who sell, lease, or license goods and services reportable to a location on the Pueblo's lands over the internet ("Internet Retailers") to distinguish between "Class 1 Receipts" and "Class 2 Receipts," as hereinafter defined, for purposes of reporting gross receipts under this Cooperative Agreement and NMAC 3.2.4.7 and 3.2.4.9. Thus, all receipts of a Non-Tribal Entity that sells, leases, or licenses good and services subject to Internet Sales as defined in this agreement that are reportable to a location on Pueblo of Isleta Land, shall be deemed to be Class 1 Receipts under the Agreement.

D.      The Department and the Pueblo wish to enter into this Cooperative Agreement to memorialize their agreement for how Internet Retailers should report gross receipts for purposes of this Cooperative Agreement and the laws of the State and the Pueblo and how the Parties will coordinate their administration of such laws.

#### **04-05-03      Definitions**

As used in this Chapter, the following terms have the meanings stated:

- A. "Agreement" means the Cooperative Agreement for internet sales tax entered into between the State of New Mexico and Pueblo of Isleta, as codified in this Chapter.
- B. "Class I Receipts" means receipts of a Non-Tribal Entity that are reportable to a location on Tribal Land, are derived from the sale of goods or services to a Tribal Entity, and either (i) are documented by the taxpayer to be exempt from the State Tax as provided by NMAC 3.2.4.7 and NMAC 3.2.4.9, as those provisions may be amended by the Department, (provided such amendments and this Agreement shall not be construed as authorizing state taxation beyond that permitted by the federal law), or (ii) the Non-Tribal Entity is an Internet Retailer and its receipts reportable to the Pueblo's Tribal Land are deemed to be so documented except as otherwise expressly provided in this Cooperative Agreement.
- C. "Class 2 Receipts" means receipts of a Non-Tribal Entity that are reportable to a location on Tribal Land, and are not Class 1 Receipts.
- D. "Department" means the Taxation and Revenue Department, the Secretary of Taxation and Revenue, or any employee of the Department exercising authority lawfully delegated to that employee by the Secretary.
- E. "Internet Retailer" means a "marketplace provider" or "marketplace seller," as defined in NMSA § 7-9-3, who sell, lease or license goods and services over the internet.
- F. "Internet Sales" means the receipts of a Internet Retailer from the sale, lease or license of goods or services reportable to the Pueblo's Tribal Land other than from a business location of the Internet Retailer on Tribal Land.
- G. "Non -Tribal Entity" means any person as defined in NMSA 1978, § 7-1-30 that is not a Tribal Entity.
- H. "Pueblo" means Pueblo of Isleta, a federally recognized Indian tribe, or any official or employee of the Pueblo exercising authority law fully delegated to that official or employee by the Tribal Council.
- I. "Receipts" means gross receipts as defined by NMSA 1978, § 7-9-3.5.
- J. "State" means the State of New Mexico.
- K. "State Tax" means the Gross Receipts and Compensating Tax imposed by NMSA 1978, Chapter 7, Article 9, as amended from time to time during the period this Agreement is in effect, including any local option gross receipts taxes imposed by any political subdivision of the State of New Mexico.
- L. "Tribal Entity" means the Pueblo; any political subdivision, agency or department of the Pueblo; any incorporated or unincorporated enterprise of the Pueblo; any corporation required to be considered an Indian entity under Eastern Navajo Industries,



Inc. v Bureau of Revenue, 552 P.2d 805 (N.M. App. 1976); any business that is fifty percent or more owned by member(s) of the Pueblo; or a member of the Pueblo.

M. "Tribal Land" means all land owned by the Pueblo of Isleta located within the exterior boundaries of the Pueblo of Isleta and all land held by the United States in trust for the Pueblo of Isleta and all land defined as " Indian Country" under 18 U.S.C. §1151, except that roadways within the exterior boundaries of the Pueblo as shown on the map attached hereto shall be deemed " Indian Country" for the purpose of the operation and administration of this Agreement only.  
Isleta.

N. "Tribal Tax" refers to any gross receipts tax that is or may be imposed by the Pueblo of Isleta.

#### **04-05-04 Transactions Affected**

This Agreement shall apply only to transactions reportable to Tribal Land which are Internet Sales by an Internet Retailer and shall apply only to taxpayers who are Non-Tribal Entities. This Agreement shall not apply to the collection of any Tribal Tax from a Tribal Entity or the collection, exemption from, or administration of, any State or Tribal Tax on any transaction other than an Internet Sale by an Internet Retailer. The tax treatment of all transactions other than Internet Sales by Internet Retailers shall be determined by otherwise applicable State, Tribal and federal law.

#### **04-05-05 Jurisdiction not Altered**

A. Nothing in this Agreement shall be construed as authorizing the State or the Pueblo to tax persons or transactions that federal law prohibits, or as authorizing a state or tribal court to assert jurisdiction over persons who are not otherwise subject to that court's jurisdiction, or as affecting any issue of the respective civil or criminal jurisdiction of the State or the Pueblo.

B. Nothing in this Agreement shall be construed as an assertion or an admission by either the State or the Pueblo that the taxes of the other apply to any transaction, or the taxes of one have precedence over the taxes of other when the person or transaction is subject to the taxing authority of both governments. This Agreement shall be construed solely as a voluntary agreement between the State and the Pueblo and shall not alter or affect the government to government relations between the State of New Mexico and any Indian nation or pueblo.

C. The Pueblo has the exclusive authority to determine whether a natural person is, or is not, a recognized member of the Pueblo.

#### **04-05-06 Administrative Agency**

To the extent required under the terms of this Agreement, the Department is designated as the administrative agency under this Agreement, except to the extent that this Agreement identifies the Pueblo as the administrative agency over those administrative matters that are within the exclusive jurisdiction of the Pueblo.

#### **04-05-07 Tribal Tax**

- A. The Pueblo has the sole authority to determine if and to what extent any Tribal Tax shall apply to any transaction and shall administer and enforce any such Tribal Tax in accordance with Tribal Law.
- B. A Tribal Entity shall be exempt from all provisions of this Agreement and the Pueblo shall have the exclusive authority and obligation to administer and enforce the Tribal Tax against a Tribal Entity. A Tribal Entity shall not be required to file any return to the Department concerning the Tribal Tax or in any other manner be subject to the jurisdiction of the Department under this Agreement.
- C. For purposes of Internet Sales subject to this agreement, the Department shall administer Class 1 Receipts in accordance with the terms of this Agreement.

#### **04-05-08 Taxpayer Identification**

- A. Upon the Department's request, the Pueblo shall provide the Department with either (i) a list of each non-Tribal Entity known by the Pueblo to be receiving delivery of goods or services from Internet Sales on Tribal Land, or (ii) certification that the Pueblo knows of no such Internet Sales.
- B. The parties agree that a political subdivision, agency, or department of the Pueblo, subject to the control of the Pueblo, is a Tribal Entity.
- C. The Department shall accept as conclusive the Pueblo's determination that an entity chartered by the Pueblo, wholly-owned by the Pueblo, and subject to the voting control of the Pueblo is a Tribal Entity. The Pueblo agrees to provide a certified copy of the articles of incorporation of such Tribal Entity upon request of the Department.
- D. The Pueblo shall have exclusive authority to determine whether a natural person is an enrolled member of the Pueblo.

#### **04-05-09 Taxpayer Returns and Reports of Receipts**

- A. All Non-Tribal Entity Internet Retailers who have receipts from Internet Sales reportable to Tribal Land and, therefore, subject to this Agreement shall report those receipts to the Department on the TRD-41413Form maintained by the Department for reporting State Tax.

B. Any Non-Tribal Entity Internet Retailer delivering goods or services to Tribal Lands and has receipts subject to this Agreement shall be required to report its gross receipts for each of the following tax districts in which the entity maintains a place of business:

District 1: Tribal Land Located in Bernalillo County

District 2: Tribal Land Located in Valencia County

C. An Internet Retailer shall determine the location of an Internet Sale to which sale is reportable as directed by NMSA § 7-1-14.

D. Any Non-Tribal Entity that has receipts from Internet Sales subject to this Agreement shall report, by appropriate code, the dollar amount of receipts that come within Class 1 or Class 2, as defined by this Agreement.

#### **04-05-10 Imposition, Amount and Allocation of State Tax and Tribal Tax**

A. Class 1 Receipts are subject only to the Tribal Tax, if any. The State shall assign a 0% rate to such Class 1 Receipts. The Department shall administer Internet Sales in accordance with this rate unless and until the rate is changed in accordance with the terms of this agreement.

B. Class 2 Receipts subject to State Tax do not include receipts from Internet Sales reportable to a location on Pueblo of Isleta land.

C. The Department shall promulgate public guidance and, if necessary, regulations, that are consistent with this Cooperative Agreement and which inform taxpayers that Internet Sales of goods or services that are delivered to locations on Pueblo of Isleta Tribal Land shall be treated as Class 1 Receipts that are not subject to State Tax and shall be reported using the location code for Class 1 Receipts for the Pueblo of Isleta.

#### **04-05-11 Levy and Collection of Delinquent Tax**

A. The Department shall be solely responsible for the collection of delinquent State Tax pursuant to state law through levy or other procedures.

B. The Pueblo shall be solely responsible for the collection of delinquent Tribal Tax pursuant to Tribal law through levy or other procedures.

#### **04-05-12 Confidentiality of Information**

No employee or former employee of the Department or of the Pueblo shall disclose to any individual other than another employee of the Department or an employee of the Pueblo whose job duties include enforcement of the Pueblo's tax ordinances any information contained in the return of any taxpayer relating to taxes subject to this Agreement, or any other information about any taxpayer acquired as a result of his or her employment by the Department or the Pueblo except to the extent that employees of the

Department are authorized to disclose such information by applicable state law or to the extent that employees of the Pueblo are authorized to disclose such information by applicable Tribal Law. This Agreement constitutes a reciprocal agreement between the Department and the Pueblo for the exchange of confidential taxpayer information for purposes of NMSA 1978, § 7-1-8.6. Any exchange of confidential taxpayer information between the Department and the Pueblo pursuant to this Agreement shall be for tax purposes only. The Pueblo agrees to enact, prior to the effective date of this Agreement, legislation imposing the obligation of confidentiality established hereunder upon all persons acquiring confidential information pursuant to the provisions of this Agreement.

#### **04-05-13      Term**

A. This Agreement shall become effective on July 1, 2022 and shall thereafter apply to Internet Sales transactions as provided in paragraph 3 of this Agreement. This Agreement shall continue in effect for a period of ten (10) years unless earlier terminated as provided in paragraphs 12b. or 14. This Agreement shall automatically be extended for additional consecutive ten (10) year terms, subject to earlier termination as provided in paragraphs 12b. or 14, unless the Department or the Pueblo notifies the other party, not more than twelve (12) months and not less than six (6) months prior to the end of the then current term, that the Agreement will not be extended beyond its then current term.

B. At any time, the Pueblo may request that the State enter into a comprehensive Cooperative Agreement concerning the application of State and Tribal Tax to all transactions reportable to Tribal Land as authorized by NMSA§ 7-9-88.1 and 9-11-12.1 (a "Comprehensive Cooperative Agreement"). Within 30 days of such request, the Parties shall enter into good faith negotiations of such a Comprehensive Cooperative Agreement. The Cooperative Agreement shall be effective in accordance with NMAC 3.1.2.10. If the Parties enter into such a Comprehensive Cooperative Agreement, this Cooperative Agreement shall terminate on the effective date of such Comprehensive Cooperative Agreement.

#### **04-05-14      Breach**

If either party concludes that the other party has failed to perform its obligations under this Agreement, it may notify the other party in writing of this basis for the alleged default and, subject to mediation required by paragraph 14, may terminate this Agreement.

#### **04-05-15      Termination**

Either party may terminate this Agreement with or without cause. The party seeking termination shall invoke mediation under paragraph 16. The mandatory mediation shall be completed as a condition precedent to delivery of written notice of termination to the other party. Termination shall become effective on either July 1 or January 1, whichever date occurs

**04-06**  
**PUEBLO OF ISLTEA DESIGN/CONSTRUCTION TAX**

**04-06-01      Short Title**

The tax imposed by this Chapter shall be known as and may be cited as the “Design/Construction Tax” of the Pueblo of Isleta.

**04-06-02      Purpose**

A.      The purpose of this Chapter is to impose a tax as to all design/construction transactions between any individual, partnership, or corporation acting within the exterior boundaries of the Pueblo of Isleta.

B.      The purpose of the Design/Construction Tax is to provide reasonable revenue to the Pueblo of Isleta to fund upgrades and maintenance to Tribal infrastructure and related costs of government operations.

**04-06-03      Definitions**

A.      The following definitions shall apply to this Ordinance:

- i.      “Pueblo” shall mean the Pueblo of Isleta.
- ii.     “Construction” shall be construed broadly to include any building, altering, repairing or demolishing any: building or other structure, transmission line, radio, television or other tower, microwave station or similar facility, road, utility line, sewer line, cable or fiber line, and any other similar service;
- iii.    “Design/Construction Materials” means any tangible personal property that is intended to become an ingredient or component part of a construction project;
- iv.     “Design/Construction Services” means any service directly contracted for or billed to a specific construction project, including design, architecture, drafting, surveying, engineering, environmental and structural testing, security, sanitation and services required to comply with governmental construction-related rules; but shall not include general business services, such as legal or accounting services, equipment maintenance or real estate sales commissions.
- v.      “Design/Construction Tax” shall mean the tax imposed by this Chapter.

**04-06-04      Imposition of Tax**

A. There is hereby imposed a Design/Construction Tax of 6.4% to all applicable transactions located within the Pueblo of Isleta for Design/Construction Materials and Services not otherwise exempted herein.

B. For purposes of this chapter, a transaction for Design/Construction Services is located within the Pueblo of Isleta if either:

- i. the services are performed within the exterior boundaries of the Pueblo, without regard to the location of any office or other business activity of the taxpayer; or
- ii. the specific construction project for which the service is contracted or billed is primarily located within the exterior boundaries of the Pueblo.

C. For purposes of this chapter, a transaction for Design/Construction Materials is located within the Pueblo of Isleta if the specific construction project for which the materials are purchased is primarily located within the exterior boundaries of the Pueblo.

#### **04-06-05 Exemptions**

The following transactions are exempt from the tax imposed by this chapter:

A. Design/Construction Materials and Services provided directly by:

- i. A Pueblo of Isleta government entity;
- ii. The United States, or any political subdivision thereof;
- iii. The State of New Mexico, or any political subdivision thereof.

B. Design/Construction Materials and Services purchased by an individual enrolled member of the Pueblo of Isleta or by an authorized resident of the Pueblo of Isleta;

C. Design/Construction Materials and Services purchased by the Pueblo of Isleta for the direct benefit of an enrolled member's residence or property.

D. Design/Construction Materials and Services purchased by the Pueblo of Isleta Health Center as the sole community healthcare facility providing direct and essential services within the exterior boundaries of the Pueblo;

E. Design/Construction Materials and Services purchased by the Pueblo of Isleta Public Housing Authority;

F. Professional services, including accounting and legal services, to which the New Mexico Gross Receipts Tax applies.

#### **04-06-06 Payment and Enforcement of the Design and Construction Tax**

- A. Payment is due to the Pueblo of Isleta Treasurer within ninety days of a dated invoice for any transaction taxable under this Chapter.
- B. The seller is responsible for paying this tax and shall do so using the form provided by the Treasurer.
- C. Upon the Treasurer's discovery that a seller has failed to timely pay the tax required by this Chapter, the Treasurer shall provide written notice of the seller's past-due tax balance to the seller, the Treasurer's Procurement Division, and to the Pueblo of Isleta Legal Department. The seller shall thereafter have ninety days to pay the past-due tax. If the seller fails to do so, the Pueblo of Isleta's Legal Department is authorized to initiate collections or other appropriate legal action, including action for civil penalties, and the Pueblo of Isleta Procurement Division is authorized to initiate a debarment or suspension action.
- D. For any past-due tax, the Treasurer, in his sole discretion, may apply interest of 10% per annum and/or a late penalty of 5% of the tax owed for each late month.
- E. No statute of limitations shall apply to the Pueblo's right to collect on past-due tax under this Chapter.

#### **04-06-07 Use of Tax Proceeds**

- A. Tax proceeds under this Chapter shall be held in an account separate and apart from the Pueblo's Community Funds and shall be used, pursuant to appropriation by the Tribal Council, exclusively for infrastructure maintenance and improvements to public facilities of the Pueblo of Isleta or to the Isleta Resort and Casino.
- B. No later than December 1st annually, the Treasurer shall submit a written and oral report to the Governor and Tribal Council detailing:
- i. Total value of the account created under this Chapter;
  - ii. Total appropriations over the last Pueblo fiscal year from the account;
  - iii. Total expenditures over the last Pueblo fiscal year from the account.

#### **04-06-08 Qualified Opportunity Zones**

- A. A qualified opportunity zone business located in a qualified opportunity zone may, under certain conditions, be eligible for preferential tax treatment of a transaction(s) taxable under this chapter.

B. “Qualified opportunity zone” means an area within the exterior boundaries of the Pueblo that has the potential for economic development.

C. “Qualified opportunity zone business” means a certified business located in a qualified opportunity zone in which (i) substantially all of the construction shall result in a tangible property (ii) that serves as commercial development for the benefit of the Pueblo of Isleta. In no instance shall a Pueblo of Isleta government entity be deemed a qualified opportunity zone business.

D. The Governor may recommend qualified opportunity zones, qualified opportunity zone businesses, tax treatment, and duration of the designation to Tribal Council. Tribal Council shall determine qualified opportunity zones, qualified opportunity zone businesses, tax treatment, and duration of the designation by majority vote. The Treasurer shall certify such determination and designations.

E. The Treasurer shall promulgate such forms and regulations as may be necessary or appropriate to carry out the purposes of this section.



**TITLE 05  
LAND USE AND LEASING**

**05-01  
RESERVED**

**05-02  
CIVIL TRESPASS**

**05-02-01      Trespass Against Pueblo of Isleta Land**

A. Any person or entity who unlawfully enters, occupies, burdens, uses, holds over, or causes discharge of hazardous waste to Pueblo of Isleta lands without the express consent either of the Pueblo of Isleta, or of the United States with the express consent of the Pueblo of Isleta, has committed an unlawful trespass against Pueblo of Isleta land in violation of this subsection.

B. The Pueblo need not demonstrate any specific economic harm to recover civil relief for a trespass under this Chapter. A trespass in violation of this Chapter constitutes an infringement of the Pueblo's sovereignty and a threat to the Pueblo's self-governance.

C. The Pueblo need not demonstrate any specific intent by the trespasser to recover civil relief for a trespass under this Chapter. By accepting the rights and privileges of entering, using, or discharging upon Pueblo of Isleta lands, persons and entities shall be deemed to have consented to be governed by this Chapter and to the full legislative, judicial, regulatory, and administrative jurisdiction of the Pueblo of Isleta and its court, to the full extent permissible under applicable law.

D. It shall be an affirmative and complete defense under this Chapter that the alleged trespasser is an enrolled member of the Pueblo of Isleta. However, nothing in this Chapter shall be construed to limit the applicability of other Pueblo of Isleta laws against such trespasser, nor to prohibit the Pueblo of Isleta from enforcing other laws, including its criminal code, against members of the Pueblo of Isleta or against nonmember Indians, including without limitation laws concerning criminal trespass.

E. This Chapter shall apply to all Pueblo of Isleta land, regardless of whether such land is held in trust for the Pueblo of Isleta or is owned in fee simple by the Pueblo of Isleta, and regardless of whether the Pueblo of Isleta or the United States has assigned, permitted, or leased such land.

F. Each day that a person or entity violates this Chapter shall constitute a separate violation. Each violation with respect to a separate parcel of land shall constitute a separate violation. A parcel shall be considered separate for purposes of this Chapter where rights to or interests in each parcel are created by a separate instrument or where each parcel is used for distinct purposes.

## **TITLE 30 PUBLIC SAFETY**

### **30-01 GENERAL PROVISIONS**

#### **30-01-01. Title**

This Chapter shall be known and cited as the Pueblo of Isleta “Law and Order Code” (hereinafter referred to in this Chapter as this “Code”) and shall be cited to as P.O.I. Code, Chapter 30.

#### **30-01-02. Authority**

This Code is enacted pursuant to the inherent governmental powers of the Pueblo of Isleta Tribe and through Article V, Section (2) (e) of the Pueblo of Isleta Constitution.

#### **30-01-03. Savings Clause**

In the event that any provision of this Code is declared invalid or unconstitutional by a court of competent jurisdiction, all other provisions shall not be affected and shall remain in full force and effect. The Isleta Tribal Court (hereinafter referred to in this Chapter as the “Court”) shall ensure that the Isleta Tribal Council is placed on notice of any Constitutional challenge to any provision contained in this Code to afford the Isleta Tribal Council an opportunity to defend the provision.

#### **30-01-04. Prior Inconsistent Laws Repealed**

Any existing laws or enactments which are inconsistent with this Code are specifically repealed; provided that Sections 1-1-17 through 22, 1-1-70 and 1-1-71 of the Pueblo’s Law & Order Code, as in effect immediately prior to the effectiveness of this Code, shall expressly survive in accordance with the adopting resolution.

#### **30-01-05. Rules and Regulation**

A. The Governor, or his or her designee, in his or her executive capacity, may recommend enactment of rules and regulations as necessary to enforce this Code to the Tribal Council. Any such rule or regulation shall take effect only upon enactment by the Tribal Council.

B. The Court may enact rules of practice consistent with the Constitution and laws of the Pueblo to facilitate all matters necessary for efficient use of the Court’s time. The Court may, from time to time, request and recommend that the Council make changes to this Code to facilitate the efficient and orderly use of the Court’s resources.

**30-01-06. Effective Date**

A. This Code shall be effective (i) when approved by the Secretary of Interior, or (ii) if the Secretary of the Interior does not disapprove this Code within one hundred and twenty (120) days following receipt by the Superintendent of the Southern Pueblos Agency, on the one hundred twenty-first (121<sup>st</sup>) day after such receipt by the Superintendent, as provided at Article X, Section 1 of the Pueblo's Constitution.

B. This Code shall apply to all criminal conduct occurring after the effective date of this Code as provided at Subsection A above and the Pueblo's Constitution. Any proceeding conducted after the effective date of this Code with respect to criminal conduct occurring before its effective date shall remain subject to the Law & Order Code in effect prior to enactment of this Code.

**30-01-07. Budgeting of Funds; Allocation of Revenues**

A. The Legislature shall annually budget funds to effectuate the purpose of this Code.

B. Revenues collected through this Code shall be allocated as may be determined by the Tribal Council.

**30-01-08. Scope and Purpose**

A. This Code shall govern the activities of all persons acting within the exterior boundaries of the Pueblo of Isleta Reservation.

B. Any portion of this Code that adopts the law of any state shall incorporate and apply such state law as in effect on the date of the enactment of this Code, unless the Tribal Council shall elect to amend this Code to incorporate changes to state law adopted after the effective date of this Code.

C. The purpose of this Code is to protect the health, safety, and welfare of the Pueblo of Isleta community members within the exterior boundaries of the reservation.

**30-01-09. Jurisdiction**

A. The judicial power of the Isleta Judiciary shall extend to:

1. All violations of the laws of the Pueblo of Isleta committed within the exterior boundaries of the Pueblo of Isleta, within any other lands held in trust for or owned in fee by the Pueblo of Isleta, or within any other lands controlled by the Pueblo of Isleta ("Pueblo Lands");

2. All civil actions in which one party is the Pueblo of Isleta, an unincorporated enterprise or wholly-owned entity thereof, or an official or employee of the Pueblo, acting in his or her official capacity;
3. All civil actions in which the cause of action arose, in whole or in part, on Pueblo Lands;
4. All other matters over which jurisdiction has been heretofore vested in the "Isleta Judiciary" or which may hereafter be placed within the jurisdiction of the Isleta Tribal Courts;

provided, however, that notwithstanding the foregoing or anything else contained in this Code, no claim, suit, or action, including a counterclaim, may be maintained against the Pueblo of Isleta, any unincorporated enterprise or wholly-owned entity thereof, or any official or employee of the Pueblo, acting in his or her official capacity, in the Isleta Tribal Courts or in any other forum, unless and to the extent that the Pueblo has expressly waived its sovereign immunity with respect to a particular claim or class of claim by (i) an ordinance or resolution duly adopted by the Tribal Council, or (ii) the express terms of a contract authorized by the Tribal Council and executed by the Governor or a Lieutenant Governor of the Pueblo, and such claim, suit, or action, is within the express scope of any such waiver.

B. The Pueblo of Isleta Judiciary shall deliver to the proper Federal authorities any offender over whom the Federal courts shall assert jurisdiction according to law.

C. No judgment shall be given on any civil suit unless the defendant has actually received notice of such suit and has at least fifteen (15) days in which to appear in court in his defense. Evidence of the receipt of the notice shall be kept as part of the record of the case.

D. The Pueblo of Isleta Tribe has original and absolute jurisdiction on any basis consistent with its sovereignty, Constitution, and laws to prosecute any Tribal member or any non-member Indian for acts covered under this Code, except as may be expressly limited by the laws of the United States.

E. The Pueblo of Isleta Tribe has jurisdiction, consistent with its sovereignty, Constitution and laws to maintain a civil enforcement action against non-Indians for acts prohibited or regulated under this Code or other laws, ordinances, resolutions, policies, regulations, rules, or orders in effect within the Pueblo of Isleta, except as may be expressly limited by the laws of the United States. However, the remedies available in any such civil enforcement action shall not include detention.

**30-01-10. Classification of Misdemeanors**

- A. Misdemeanors under this Code shall be classified as follows:
1. Class A Misdemeanor.
  2. Class B Misdemeanor.
  3. Class C Misdemeanor.
  4. Class D Misdemeanor.
  5. Class E Misdemeanor.
- B. Penalties for Misdemeanors are as follows:
1. Class A Misdemeanor, up to one hundred eighty (180) days imprisonment, 360 hours of community service, a fine not to exceed \$500.00, or any combination of the three.
  2. Class B Misdemeanor, up to one hundred twenty (120) days imprisonment, 240 hours of community service, a fine not to exceed \$400.00, or any combination of the three.
  3. Class C Misdemeanor, up to ninety (90) days imprisonment, 180 hours of community service, a fine not to exceed \$300.00, or any combination of the three.
  4. Class D Misdemeanor, up to sixty (60) days imprisonment, 120 hours of community service, a fine not to exceed \$200.00, or any combination of the three.
  5. Class E. Misdemeanor, up to thirty (30) days imprisonment, up to sixty (60) hours of community service, a fine not to exceed \$100.00, or any combination of the three.

**30-01-11. Civil Actions against Non-Indians**

- A. A person or entity who is not an enrolled member of a Tribe who violates any law, resolution, order, or ordinance of the Pueblo, whether such law is criminal or civil in nature, may be subject to a civil enforcement action by the Pueblo of Isleta under this Chapter. This shall include, but not be limited to, violations of:
1. A banishment order lawfully issued by the Tribal Council;
  2. A banishment order lawfully issued by the Governor;
  3. Any provision of the Pueblo of Isleta Law and Order Code;
  4. Resolution designating restricted sites and prohibiting photography or recordings on such sites;
  5. Any lawfully issued permit, license, or lease;
  6. A contractual obligation of confidentiality.

B. For any enforcement action brought under this Chapter, the Pueblo must establish that:

1. The defendant committed a violation of a Pueblo of Isleta law, resolution, order, ordinance, permit, license, or lease;
2. The violation occurred within the external boundaries of the Pueblo of Isleta;
3. The defendant is not an enrolled member of a Tribe;
4. The violation threatens or impacts, whether directly or indirectly, the political integrity, economic security, or health or welfare of the Pueblo of Isleta;
5. The defendant was provided notice of the suit through service of process that complies with the Federal Rules of Civil Procedure; and
6. The defendant was provided an opportunity to respond to the suit, including through a court hearing.

C. In any action brought under this section, the Pueblo may seek the following relief:

1. Declaratory judgment;
2. Attorney's fees
3. Injunctive relief, including a preliminary injunction or ex parte temporary restraining order;
4. Compensatory damages or restitution, including through *parens patriae* actions brought by the Pueblo for the benefit an individual member or resident of a class of members or residents of the Pueblo of Isleta;
5. Compensation for unjust enrichment;
6. Civil penalties of up to \$10,000 per violation. In determining the civil penalty to apply, the Court shall consider for each violation:
  - i. The seriousness of the violation;

- ii. The economic or other benefit to the violator resulting from each violation;
  - iii. Any opportunity costs to the Pueblo of Isleta or to an enrolled member of the Pueblo of Isleta resulting from the violation;
  - iv. Whether the violation, by its nature, threatened or impacted, whether directly or indirectly, the sovereignty or political self-governance of the Pueblo of Isleta;
  - v. Any actual damages to the Pueblo of Isleta or to an enrolled member of the Pueblo of Isleta caused, whether directly or indirectly, by the violation;
  - vi. The violator's intent, including whether the violator knew or should have known of the violation;
  - vii. Any attempts by the violator to notify the Pueblo of Isleta of their violation;
  - viii. Any attempts by the violator to remediate their violation;
  - ix. Any history of other violations by the same person or entity;
  - x. Any other factors that justice may require.
- D. The relief authorized by this Chapter shall be in addition to, rather than in the place of, any other relief specifically authorized under Tribal law.
- E. The Pueblo has the burden to prove its case in an action brought under this Chapter by a preponderance of the evidence, except that clear and convincing evidence must be shown by the Pueblo in order to obtain compensation for unjust enrichment and/or civil penalties.
- F. In any action brought under this Chapter, either party may request a jury trial.
- G. The Isleta Police Department is authorized to enforce any civil order under this Act.

**30-01-12. Disposition of Fines and Civil Penalties, Property Seizure, and Forfeiture**

- A. This section applies to enrolled Tribal members, non-member Indians, and non-Indians.

B. All fines and civil penalties imposed for the commission of an offense shall be paid to the Isleta Tribal Court Clerk.

C. All monies collected by the Tribal Court Clerk for fines and civil penalties assessed under this Code shall be submitted to the Pueblo of Isleta Treasury Department on a weekly basis. The Treasurer shall issue the Court Clerk a receipt for the monies collected.

D. The Tribal Court Clerk shall prepare a quarterly statement of revenues and shall submit such report to the Treasury Department, the Tribal Council, and the Governor's Office.

E. In the event a defendant does not pay the Isleta Tribal Court the fine or civil penalty assessed against that defendant, either the Isleta Prosecutor or the Isleta Legal Department may seek to collect such fine or civil penalty from the defendant. Any amount collected from defendant through such action shall be submitted to the Pueblo of Isleta Treasury Department and reported to the Tribal Council and to the Governor.

F. Costs and Surcharges collected shall be allocated to the Judiciary as determined by the Tribal Council.

G. Fines and civil penalties may be allocated to any department for any purpose, as determined by the Tribal Council.

H. Proceeds from the liquidation of forfeitures shall be allocated to the Isleta Police Department as determined by the Tribal Council.

I. The Isleta Police Department is authorized to seize any property under probable cause of involvement in the commission of the below-listed offenses under Isleta, state, or federal law occurring within the exterior boundaries of the Pueblo of Isleta, regardless of the Tribal membership or Indian status of the property owner:

1. Drug offenses;
2. Violent crimes;
3. Weapons offenses;
4. Theft and white-collar offenses;
5. Traffic Code offenses of driving on a revoked or suspended license;
6. Traffic Code offenses of driving while intoxicated;
7. Domestic violence offenses; and



8. Human trafficking offenses.

J. In every instance, the Isleta Police Department shall comply with its Policies and Procedures, duly adopted by Tribal Council, and any other applicable law in maintaining evidence relating to an ongoing criminal investigation. In no instance shall any person be entitled to property held by the Isleta Police Department held for its evidentiary value or pursuant to an active criminal investigation. There shall be no time limit imposed on the Isleta Police Department for its retention of property pursuant to an ongoing investigation or pending prosecution, regardless of the jurisdiction charged with such investigation or prosecution.

K. The Isleta Police Department may seek an Order of Forfeiture upon either a criminal conviction against the property owner or two years after the seizure, even if the underlying criminal matter is still pending.

1. The Isleta Police Department is entitled to seek an Order of Forfeiture against any property owner, whether Indian or non-Indian, upon the entry of a conviction in the underlying criminal manner.
2. The Isleta Police Department may only seek an Order of Forfeiture against a property owner who is not ultimately convicted in the underlying criminal matter if the property owner is non-Indian.

L. In the event the underlying criminal action is disposed of without a conviction, or the property is determined not to hold any evidentiary value even while the underlying criminal matter remains pending, the Isleta Police Department may, but shall not be required to, elect to return the property to the Owner under the advisement of the Isleta Prosecutor.

M. The procedure for obtaining an Order of Forfeiture shall be as follows:

1. Either the Isleta Prosecutor or the Isleta Legal Department may represent the Isleta Police Department in any forfeiture action under this section.
2. A petition for Order of Forfeiture shall be filed by the Isleta Police Department, containing an officer's affidavit describing the nature of the investigation to which the property was subject and the reason that the property was seized.
3. The petition shall be personally served upon the person who the Isleta Police Department reasonably believes to be the property

owner. If the property owner is deceased or cannot be located, the property shall be considered abandoned and service of process shall be deemed complete upon publication in a newspaper of general circulation in the location where the Isleta Police Department reasonably believes the property owner resided at the time of the property seizure.

4. The Isleta Tribal Court shall hold a hearing no sooner than thirty days after service of process is complete.
5. The burden shall be on the Isleta Police Department to show by a preponderance of the evidence that either:
  - i. The property owner did know and should have known after reasonable inquiry that the property had been used or was involved in the commission of a violation of Isleta, state, or federal law within the exterior boundaries of the Pueblo of Isleta; or
  - ii. The property in question had been used or was involved in the commission of a violation of Isleta, state, or federal law within the exterior boundaries of the Pueblo of Isleta.
6. If the property owner fails to appear at the hearing, the Order of Forfeiture may be granted by the Court. In determining whether to grant the Order of Forfeiture, the Court may consider:
  - i. The nexus between the property and the property owner's commission of a violation of law;
  - ii. The nature of the underlying crime;
  - iii. The property owner's level of intent, malice, or wanton recklessness for the safety of others in the commission of the underlying crime;
  - iv. Whether the property owner is a habitual offender;
  - v. The likelihood that the property owner will use the property to commit the same or a similar crime in the future;
  - vi. The importance of the property to the property owner's livelihood.

7. The Order of Forfeiture shall include:

- i. A description of the property at issue;
- ii. An order that the property is owned by the Isleta Police Department by virtue of its involvement in criminal activity;
- iii. Direction as to the means of liquidation of the property, such as through public auction or some other method of sale or conversion;
- iv. Direction that the property shall be liquidated only for a reasonable fair market value.

N. The Isleta Police Department shall remit the proceeds of any liquidated property forfeited under this section to the Pueblo of Isleta Treasurer. The Isleta Police Department shall maintain an accurate accounting of any such proceeds, including a list of the property liquidated and the value received for such property.

O. Each year, upon presenting its budget request to the Tribal Council, the Isleta Police Department shall provide the Tribal Council with an accounting of property seized in connection with a suspected crime and thereafter lawfully forfeited under this Chapter. The Council may appropriate any proceeds from such seizures to the Isleta Police Department for any uses the Tribal Council deems appropriate and in the best interests of the Pueblo, or for any other uses relating to law enforcement.

P. Nothing in this section shall preclude the parties from agreeing to forfeiture through a plea agreement and for the same to be adopted by the Court.

### **30-01-13. Increased Penalty for Habitual Criminality**

A. Any person who is a repeater, and the current crime is one for which imprisonment may be imposed, is guilty of being habitually criminal.

B. Any person found guilty of being habitually criminal shall be subject to the maximum term of imprisonment for the underlying crime up to an additional one hundred and eighty days total imprisonment time, fines/forfeitures and community service hours may be doubled.

A repeater is a person who has been convicted of a felony in any jurisdiction within the United States of America or by a military tribunal during the five (5) year period immediately preceding the commission of crime the person is currently being sentenced for, or if the person has been convicted of misdemeanors in any jurisdiction

within the United States of America on three (3) separate occasions during the same period.

## **30-02 DEFENSES**

### **30-02-01. Intoxication**

An intoxicated or drugged condition of the actor is a defense only if it was involuntary and renders the actor incapable of distinguishing between right and wrong in regard to the alleged criminal act at the time the act was committed or if it negates the state of mind essential to committing the crime.

### **30-02-02. Mistake**

A mistake may be a defense when an honest error, either of fact or law, negates the state of mind essential to committing the crime.

### **30-02-03. Adequate Provocation**

Adequate provocation, such that it is sufficient for a reasonable person to lose self-control, is an affirmative defense only to reduce intentional homicide to reckless homicide.

### **30-02-04. Privilege**

If an actor's conduct is privileged, although otherwise prohibited, it is a defense to the prosecution for any crime based upon that conduct. Privilege may be asserted when an actor's conduct (1) is in defense of persons or property (2) is in good faith and is authorized by the duties of public office, or (3) is a reasonable accompaniment of a lawful arrest.

### **30-02-05. Coercion**

A threat by a person which causes an actor to reasonably believe that his or her act is the only means of preventing imminent death or great bodily harm to the actor or another, which causes the actor to so act, is a defense to a prosecution for a crime based upon that act, except for intentional homicide, which shall be reduced to reckless homicide.

### **30-02-06. Necessity**

Natural physical forces which cause the actor to reasonably believe that his or her act is the only means of preventing imminent public disaster or imminent death or great bodily harm to the actor or another, which causes the actor to so act is a defense to the prosecution of a crime based upon that act, except for intentional homicide, which shall be reduced to reckless homicide.

**30-02-07. Self Defense and Defense of Others**

A. A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person, but may only use such force as is necessary to terminate the threat or interference.

B. This §30-02-07 is inapplicable when a person provokes an attack, whether by lawful or unlawful conduct, with the intent to use such provocation as an excuse to cause death or great bodily harm to another

### **30-03 INCHOATE CRIMES**

#### **30-03-01. Attempt**

A. Any person who, with the intent to commit a specific offense, does any act that constitutes a substantial step towards the commission of that offense, is guilty of an attempt.

B. Any person found guilty of attempt may be sentenced to a term of imprisonment not to exceed one-half the maximum sentence of the underlying offense, community service not to exceed one-half the maximum sentence for the underlying offense, payment of a fine/forfeiture not to exceed one-half the maximum fine for the underlying offense, or any combination of the three.

C. It shall be an affirmative defense to attempt if the person voluntarily abandoned his or her efforts to commit the specific offense, or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose. Renunciation is not complete if it is in response to law enforcement surveillance or detection, or to postpone the criminal conduct until a more advantageous time, or to transfer the criminal effort to another similar objective.

#### **30-03-02. Conspiracy**

A. Any person who combines efforts with another person(s) by taking overt action to commit a crime, whether or not he or she is aware of the identity of all conspirators, is guilty of conspiracy. If a person conspires to commit multiple crimes, he or she is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or a continuous conspiratorial relationship.

B. Any person found guilty of conspiracy may be sentenced to a term of imprisonment not to exceed the maximum sentence for the underlying offense, community service not to exceed the maximum sentence for the underlying offense, payment of a fine/forfeiture not to exceed the maximum fine/forfeiture for the underlying offense, or any combination of the three.

C. It is an affirmative defense to conspiracy if the person voluntarily and completely renounces his or her criminal intent by halting any further actions to commit the crime or crimes and by giving timely warning to law enforcement authorities of the conduct or result which is the object of the conspiracy, or otherwise making a reasonable effort to prevent such conduct or result. Renunciation is not complete if it is in response to law enforcement surveillance or detection, or to postpone the criminal conduct until a more advantageous time, or to transfer the criminal effort to another similar objective.

### **30-03-03. Solicitation**

A. Any person who purposely promotes or pays another to commit a crime, whether or not the commission of the crime is accomplished, is guilty of solicitation.

B. Any person found guilty of solicitation may be sentenced to a term of imprisonment not to exceed the maximum sentence for the underlying offense, community service not to exceed the maximum sentence for the underlying offense, payment of a fine/forfeiture not to exceed the maximum fine/forfeiture for the underlying offense, or any combination of the three.

C. It is an affirmative defense that the actor, after soliciting another person to commit a crime, persuaded him or her not to do so or otherwise prevented the commission of the crime, manifesting a complete and voluntary renunciation of his or her criminal purpose. Renunciation is not complete if it is in response to law enforcement surveillance or detection or is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective.

### **30-03-04. Accomplice to a Crime**

A. Any person who, purposefully promotes or facilitates the commission of an offense by aiding or attempting to aid such other person in committing an offense is guilty of being an accomplice.

B. Any person found guilty of being an accomplice may be sentenced to a term of imprisonment not to exceed one half (1/2) the maximum sentence for the underlying offense, community service not to exceed one-half the maximum sentence for the underlying offense, payment of a fine/forfeiture not to exceed one-half the maximum fine/forfeiture for the underlying offense, or any combination of the three.

## **30-04 CRIMES AGAINST BODILY SECURITY**

### **30-04-01. Intentional Homicide**

A. Any person who intentionally causes the death of another human being is guilty of intentional homicide.

B. Any person found guilty of intentional homicide is guilty of a Class A Misdemeanor.

**30-04-02. Reckless Homicide**

A. Any person who causes the death of another human being under circumstances that show utter disregard for human life is guilty of reckless homicide.

B. Any person found guilty of reckless homicide is guilty of a Class A Misdemeanor.

**30-04-03. Assault**

A. Any person who intentionally, knowingly or recklessly commits the following is guilty of Assault:

1. attempts to commit a battery upon another; or
2. places another in reasonable apprehension of an immediate battery.

B. Any person found guilty of Assault is guilty of a Class D Misdemeanor.

*Amended by Tribal Council Motion on September 20, 2017, a vote count of 7-0-0.*

**30-04-04. Aggravated Assault**

A. Any person who intentionally, knowingly or recklessly commits the following is guilty of Aggravated Assault:

1. places another in reasonable apprehension of immediate physical injury; or
2. threatens another with a deadly or dangerous weapon;
3. threatens another with intent to commit physical injury; or
4. assaults a Pueblo of Isleta government official who is acting in his/her official capacity or as a result of his/her official capacity.

B. Any person found guilty of Aggravated Assault is guilty of a Class C Misdemeanor.

*Amended by Tribal Council Motion on September 20, 2017, a vote count of 7-0-0.*

**30-04-05. Assault with Intent to Commit Rape**

A. Any person who intentionally, knowingly, or recklessly causes any injury to another person with the intent to injure, insult, or provoke such person while placing a person in reasonable apprehension of imminent physical injury or threatens a person with rape is guilty of assault with intent to commit rape.

B. Any person found guilty of assault with intent to commit rape is guilty of a Class A Misdemeanor.



**30-04-06. Assault With Intent to Cause Serious Physical Injury**

A. Any person who intentionally, knowingly, or recklessly causes any injury to another person with the intent to injure, insult, or provoke such person while placing a person in reasonable apprehension of imminent physical injury or threatens a person with serious physical injury is guilty of assault with intent to cause serious physical injury.

B. Any person found guilty of assault with intent to cause serious physical injury is guilty of a Class B Misdemeanor.

**30-04-07. Assault With Intent to Kill**

A. Any person who intentionally, knowingly, or recklessly causes any injury to another person with the intent to injure, insult, or provoke such person while placing a person in reasonable apprehension of imminent physical injury or threatens a person with death, even if not imminent, is guilty of assault with intent to kill.

B. Any person found guilty of assault with intent to kill is guilty of a Class A Misdemeanor.

**30-04-08. Harassment**

A. Any person who knowingly pursues a pattern of conduct intended to annoy, seriously alarm, or terrorize another person which causes substantial emotional distress is guilty of harassment.

B. Any person found guilty of harassment is guilty of a Class D Misdemeanor.

C. Any person found guilty of harassment of the same person on more than two occasions will be subject to an increased penalty of up to one hundred eighty (180) days in jail, community service not to exceed two times the maximum sentence for the underlying offense, payment of a fine/forfeiture not to exceed two times the maximum fine for the underlying offense, or any combination of the three.

**30-04-09. Stalking**

A. Any person who intentionally or knowingly engages in a pattern of repeated conduct over a period of time, such as maintaining physical proximity to the person; approaching or confronting the person; appearing at the person's workplace or contacting the person's employer or co-workers; entering property owned, leased, or occupied by the person; contacting the person by phone; placing or delivering objects to the person's place of work or residence which causes a reasonable person to fear for his or her own safety or the safety of his or her immediate family is guilty of stalking.

B. Any person found guilty of stalking is guilty of a Class C Misdemeanor.

C. Any person found guilty of stalking of the same person on more than two occasions will be subject to an increased penalty of up to one hundred eighty (180) days in jail, community service not to exceed two times the maximum sentence for the underlying offense, payment of a fine/forfeiture not to exceed two times the maximum fine for the underlying offense, or any combination of the three.

**30-04-10. Threatening or Intimidating**

A. Any person who threatens or intimidates a person by word or conduct that causes physical injury to another or damage to property, or causes serious public inconvenience including, but not limited to, evacuation of a building or place of assembly is guilty of threatening or intimidating.

B. Any person found guilty of threatening or intimidating is guilty of a Class D Misdemeanor.

**30-04-11. Kidnapping**

A. Any person who willfully takes, keeps, or entices away a child under the age of 18 years from his or her parent(s), guardian(s) or custodian(s) without the consent of the parent, guardian, or custodian is guilty of kidnapping.

B. Any person found guilty of kidnapping is guilty of a Class A Misdemeanor.

**30-04-12. Custodial Interference**

A. Any person who entices away or keeps from lawful custody of another any child less than eighteen (18) years of age or any incompetent entrusted by authority of law to the custody of another person or institution is guilty of custodial interference. If a child is born out of wedlock, the mother of the child is the legal custodian of the child for the purposes of this section until paternity is established and the Court determines custody. Each 24-hour period of custodial interference shall be deemed a separate count.

B. Any person found guilty of custodial interference is guilty of a Class C Misdemeanor.

**30-04-13. False Imprisonment**

A. Any person who intentionally confines or restrains another without the person's consent and with knowledge that he or she has no lawful authority to do so is guilty of false imprisonment.

B. Any person found guilty of false imprisonment is guilty of a Class A Misdemeanor.

**30-04-14. Violation of an Injunction**

A. Any person who intentionally and knowingly violates a temporary restraining order or injunction issued by the Court for the protection of a natural person or persons shall be guilty of violation of an injunction.

B. Any person found guilty of violation of an injunction is guilty of a Class C Misdemeanor.

**30-04-15. Battery**

A. A person who intentionally or knowingly touches or applies force to another in an unlawful, rude or angry manner is guilty of Battery.

B. Any person found guilty of Battery is guilty of a Class C Misdemeanor.

*Enacted by Tribal Council Motion on September 20, 2017, a vote count of 7-0-0.*

**30-04-16. Aggravated Battery**

A. Any person who intentionally or knowingly commits the following on another is guilty of Aggravated Battery:

1. causes physical injury or temporary disfigurement; or
2. touches or applies force with a deadly or dangerous weapon; or
3. causes serious physical injury.

B. Any person found guilty of Aggravated Battery causing physical injury or temporary disfigurement is guilty of a Class B Misdemeanor.

C. Any person found guilty of Aggravated Battery causing serious physical injury or with a deadly or dangerous weapon is guilty of a Class A Misdemeanor.

D. In addition, any deadly or dangerous weapon used to commit this offense shall be forfeited by order of the Court to the Isleta Police Department and such individual may be required to turn over all firearms in his/her possession to the Isleta Police Department.

*Enacted by Tribal Council Motion on September 20, 2017, a vote count of 7-0-0.*

**30-04-17. Assault on a Police Officer**

A. Any person who intentionally or knowingly attempts to commit a battery on a known, uniformed or otherwise easily identifiable law Police Officer, acting in an official capacity or as a result of his/her official capacity is guilty of Assault on a Police Officer.

B. Any person found guilty of Assault on a Police Officer is guilty of a Class D Misdemeanor.

*Enacted by Tribal Council Motion on September 20, 2017, a vote count of 7-0-0.*

**30-04-18. Aggravated Assault on a Police Officer**

A. Any person who intentionally or knowingly commits any of the following on a known, uniformed or otherwise identifiable law Police Officer, acting in an official capacity or as a result of his/her official capacity is guilty of Aggravated Assault on a Police Officer;

1. places a Police Officer in reasonable apprehension of an immediate physical injury, or
2. threatens a Police Officer with a deadly or dangerous weapon; or
3. threatens a Police Officer with intent to commit physical injury.

B. Any person found guilty of Aggravated Assault on a Police Officer is guilty of a Class C Misdemeanor.

C. In addition, any deadly or dangerous weapon used to commit the offense shall be forfeited by order of the Court to the Isleta Police Department and such individual may be required to turn over all firearms in his/her possession to the Isleta Police Department.

*Enacted by Tribal Council Motion on September 20, 2017, a vote count of 7-0-0.*

**30-04-19. Battery on a Police Officer**

A. Any person who intentionally or knowingly touches or applies force in an unlawful, rude or angry manner to a known, uniformed, or otherwise easily identifiable Police Officer acting in an official capacity or as a result of his/her official capacity is guilty of Battery on a Police Officer.

B. Any person found guilty of Battery on a Police Officer is guilty of a Class C Misdemeanor.

*Enacted by Tribal Council Motion on September 20, 2017, a vote count of 7-0-0.*

**30-04-20. Aggravated Battery on a Police Officer**

A. Any person who intentionally or knowingly commits any of the following on a known, uniformed, or otherwise easily identifiable Police Officer, acting in an official capacity or as a result of their official capacity is guilty of Aggravated Battery on a Police Officer:

1. causes physical injury or temporary disfigurement to a Police Officer; or
2. touches or applies force to a Police Officer with a deadly or dangerous weapon; or
3. causes serious physical injury.

B. Any person found guilty of Aggravated Battery on a Police Officer causing physical injury or temporary disfigurement is guilty of a Class B Misdemeanor.

C. Any person found guilty of Aggravated Battery on a Police Officer causing serious physical injury or with a deadly or dangerous weapon is guilty of a Class A Misdemeanor.

D. In addition, any deadly or dangerous weapon used to commit the offense shall be forfeited by order of the Court to the Isleta Police Department and such individual may be required to turn over all firearms in his/her possession to the Isleta Police Department.

*Enacted by Tribal Council Motion on September 20, 2017, a vote count of 7-0-0.*

### **30-05 CRIMES AGAINST CHILDREN**

#### **30-05-01. Abuse of a Child**

A. Any person who intentionally, recklessly, or negligently (1) causes physical injury, or death of a child, (2) acts of cruelty to a child by confining the child, (3) tortures a child, (4) neglects a child by failing to adequately feed and protect the child from inclement weather, or (5) allows another person to perpetuate such acts against the child is guilty of child abuse.

B. Any person found guilty of child abuse is guilty of a Class B Misdemeanor.

C. It shall be a defense to a charge of child abuse if the person having custody or care of a child uses appropriate physical force upon the child only to the extent reasonably necessary and appropriate to maintain discipline, to protect the child from injuring him or herself or others, or in self-defense.

#### **30-05-02. Obstruction of Investigation of Injuries to a Child**

A. Any person having custody or control of medical, psychological, or other records (a "Records Custodian"), which may aid in the investigation of a report of injury to a child, is required to provide such records to the Isleta Police Department or Isleta Social Services upon written request. The Records Custodian may remove reference to identification of persons other than the child, prescription or medical treatment information, or other sensitive information as necessary, to protect patient confidentiality.

Any person who fails to provide the appropriate information shall be guilty of obstruction of investigation of injuries to a child.

B. Any Records Custodian found guilty of obstruction of investigation of injuries to a child is Guilty of a Class C Misdemeanor.

**30-05-03. Abandonment of a Child**

A. Any person having the responsibility for the care and welfare of a child who intentionally leaves or abandons the child so that the child may or does suffer neglect is guilty of abandonment of a child.

B. Any person found guilty of abandonment of a child is guilty of a Class C Misdemeanor.

**30-05-04. Failure to Support a Dependent**

A. Any person who knowingly fails to provide financial support to a child whom they are legally obligated to support, whether the child is born in or out of wedlock or to another dependent, is guilty of failure to support a dependent.

B. Any person found guilty of failure to support a dependent is guilty of a Class C Misdemeanor.

**30-05-05. Contributing to the Delinquency of a Minor**

A. Any person who intentionally, negligently, or recklessly encourages, contributes to, or aids a minor in committing a delinquent act or a criminal offense is guilty of contributing to the delinquency of a minor.

B. Any person found guilty of contributing to the delinquency of a minor is guilty of a Class E Misdemeanor.

**30-05-06. Failure to Send a Child to School**

A. Any person who, without justification or excuse, fails to send or deliver a child under his or her care and supervision to school is guilty of a failure to send a child to school.

B. Any person found guilty of failing to send a child to school is guilty of a Class E Misdemeanor. Each day of school missed shall be considered a separate offense.

**30-05-07. Enticement of a Child**

A. Any person who invites, persuades, or attempts to persuade a child to enter a vehicle, building, room, or other secluded area with the intent to commit a crime against that child is guilty of enticement of a child.

B. Any person found guilty of enticement of a child is guilty of a Class B Misdemeanor.

**30-05-08. Molestation of a Child**

A. Any person who knowingly has sexual contact with a child age fourteen (14) years or younger by directly or indirectly touching, fondling, or manipulating any part of the genitals, anus, or female breast, by any part of the body or by any object, or who causes a child under the age of fourteen years to directly or indirectly touch, fondle, or manipulate any part of a genital, anus, or female breast of another person is guilty of child molestation.

B. Any person found guilty of child molestation is guilty of a Class A Misdemeanor.

**30-05-09. Sexual Conduct With a Minor**

A. Any person who intentionally or knowingly engages in sexual intercourse or oral sexual contact with any person who is at least fifteen years of age, but less than eighteen years of age, shall be guilty of sexual conduct with a minor.

B. Any person found guilty of sexual conduct with a minor at least fifteen years of age, but less than eighteen years, is guilty of a Class E Misdemeanor.

**30-05-10. Public Sexual Indecency to a Minor**

A. Any person who intentionally, knowingly, or recklessly engages in any act involving contact between a person's mouth, vulva, genitals, or anus and the genitals or anus of another person or animal in front of a minor under the age of fifteen, is guilty of public sexual indecency to a minor.

B. Any person found guilty of public sexual indecency to a minor is guilty of a Class C Misdemeanor.

**30-05-11. Sexual Exploitation of a Child**

A. Any person who knowingly records, films, photographs, duplicates, distributes, transports, sells, purchases, or possesses any visual or print medium in which children are engaged in sexual conduct is guilty of sexual exploitation of a child.

B. Any person found guilty of sexual exploitation of a child is guilty of a Class B Misdemeanor.

**30-05-12. Commercial Sexual Exploitation of a Child**

A. Any person who knowingly permits, uses, employs, persuades, entices, induces, coerces, finances, or transports in or across the Pueblo of Isleta Reservation a minor to engage in, or assist others to engage in, sexual conduct, produce any visual or print medium, or a live act depicting such conduct for the purpose of monetary gain is guilty of commercial sexual exploitation of a child.

B. In a prosecution relating to the commercial sexual exploitation of a child, the trier of fact may draw the inference that a participant is a minor if the visual or print medium or live act through its title, text, or visual representation depicts the participant as a minor.

C. Any person found guilty of commercial sexual exploitation of a child is guilty of a Class B Misdemeanor.

**30-05-13. Defenses to Sexual Contact With a Child**

A. It is a defense to prosecution if the act was done in furtherance of lawful medical practice.

B. It is a defense to prosecution if the act was done by a duly licensed physician or registered nurse, or a person acting under his or her direction, or any person who renders emergency care at the scene of an emergency occurrence, which consists of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the health of the patient, or if the person rendering emergency care reasonably believed that no competent person was available to give consent, but that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

C. It is a defense to prosecution if the person committing the act is, or was, the spouse of the child at the time the act occurred, and the act was consensual.

D. It is a defense to prosecution if both the defendant and the child are of the age of fifteen, sixteen, or seventeen and the conduct was consensual.

**30-06 WEAPONS OFFENSES**

**30-06-01. Carrying a Concealed Weapon**

A. Any person who possesses or carries a weapon that is hidden from plain view on or about his or her person or within his or her immediate control is guilty of carrying a concealed weapon. This section does not apply to any person authorized by any tribal government, state government, or by the government of the United States to



carry such weapon.

B. Any person found guilty of carrying a concealed weapon is guilty of a Class C Misdemeanor.

**30-06-02. Unlawful Possession of Deadly or Dangerous Weapon**

A. Any person who owns or possesses a deadly or dangerous weapon must show that the weapon was legally purchased and registered if a firearm, that the weapon is maintained in the person's own residence for his or her lawful protection, is maintained in a privately-owned automobile for his or her lawful protection, is used for lawful hunting or sporting purposes, or is possessed by a person authorized to do so by any tribal or state government or the United States Government. Any person who possesses a deadly or dangerous weapon without meeting the requirements of this Section is guilty of unlawful possession of a deadly or dangerous weapon. Any person who violates a lawful court order to relinquish firearms is guilty of unlawful possession of a deadly or dangerous weapon.

B. Any person found guilty of unlawful possession of a deadly or dangerous weapon is guilty of a Class D Misdemeanor.

**30-06-03. Possession of Deadly or Dangerous Weapons on School Grounds or at School Activities**

A. Any person, except for a Police Officer in the performance of his or her official duties, who possesses a deadly or dangerous weapon on school grounds, at a school sponsored activity, in a school building, or on school provided transportation is guilty of possession of deadly or dangerous weapons on school grounds or at school activities.

B. Any person found guilty of possession of deadly or dangerous weapons on school grounds or at school activities is guilty of a Class C Misdemeanor.

**30-06-04. Possession of Deadly or Dangerous Weapons by Persons Convicted of Crimes of Violence**

A. Any person previously convicted for any crime of violence who thereafter possesses any deadly or dangerous weapon is guilty of possession of deadly or dangerous weapons after conviction of a crime of violence.

B. Any person found guilty of possession of a deadly or dangerous weapon after conviction of a crime of violence is guilty of a Class C Misdemeanor.

**30-06-05. Negligent Use of Deadly Weapon**

A. Any person who (1) discharges a firearm into a building, (2) discharges a firearm into a vehicle, (3) discharges a firearm into or near a residence, (4) carries a firearm while intoxicated, or (5) otherwise endangers the safety of another person by using a firearm in a careless manner is guilty of negligent use of a deadly weapon.

B. Any person found guilty of negligent use of a deadly weapon is guilty of a Class C Misdemeanor.

**30-06-06. Reckless Storage of a Firearm**

A. Any person is guilty of reckless storage of a firearm if (1) he or she stores or leaves a loaded firearm within the reach or easy access of a child who is fourteen (14) years of age or younger, and (2) the child obtains the firearm without the lawful permission of his or her parent or guardian or the person having charge of the child, (3) the child discharges the firearm, and (4) the discharge causes harm to the child or another person.

B. Any person found guilty of reckless storage of a firearm is guilty of a Class C Misdemeanor

**30-06-07. Drive By Shooting**

A. Any person who intentionally or knowingly discharges a firearm from a vehicle so as to injure or kill another person and flees the scene is guilty of a drive-by shooting.

B. Any person found guilty of a drive-by shooting is guilty of a Class B Misdemeanor.

**30-06-08. Misuse of Fireworks or Explosives**

A. Any person who intentionally or knowingly arms fireworks or explosives and uses them for the purpose of injuring another is guilty of misuse of fireworks or explosives.

B. Any person found guilty of misuse of fireworks or explosives is guilty of a Class D Misdemeanor.

**30-06-09. Communicating a Bomb Scare**

A. Any person who intentionally conveys, or causes to be conveyed, any threat or false information, known by such person to be false, concerning an attempt or alleged attempt being made or to be made to destroy any property by the means of explosives shall be guilty of communicating a bomb scare.

B. Any person found guilty of communicating a bomb scare is guilty of a Class D Misdemeanor.

## **30-07 NUISANCES**

### **30-07-01. Public Nuisance**

A. Any person who unlawfully endangers the health or safety of another or interferes with another's enjoyment of property by willfully or negligently causing a hazardous, unsightly, or unhealthy condition to exist on public property, or a premise, or place where persons are known to gather for purposes of engaging in lawful conduct is guilty of a public nuisance.

B. Any person found guilty of a public nuisance is guilty of a Class E Misdemeanor.

### **30-07-02. Polluting Water**

A. Any person who intentionally or knowingly discards objects or substances into any waterway, river, tributary, stream, lake, pond, reservoir, canal, ditch, or spring that causes it to become dangerous for human or animal consumption or use is guilty of polluting water.

B. Any person found guilty of polluting water is guilty of a Class C Misdemeanor.

### **30-07-03. Littering**

A. Any person who intentionally or knowingly discards or deposits any litter upon any highway, public place, or upon any land not his or her own, or permits any litter to be thrown from a vehicle which he or she is operating is guilty of littering.

B. Any person found guilty of littering is guilty of a Class E Misdemeanor.

### **30-07-04. Abandonment of Dangerous Containers**

A. Any person who abandons, discards, or keeps in a place and manner accessible to children any refrigerator, icebox, freezer, airtight container, cabinet, trunk, or any similar container that could imprison a child is guilty of abandoning a dangerous container.

B. Any person found guilty of abandoning a dangerous container is guilty of a Class D Misdemeanor.

**30-07-05. Abandonment of Hazardous Materials**

A. Any person who intentionally or knowingly discards hazardous materials, as defined in Chapter 49 of the Code of Federal Regulations, upon any highway, public place, land, or waterway, other than a specifically designated hazardous waste removal site, is guilty of unlawfully abandoning hazardous materials.

B. Any person found guilty of unlawfully abandoning hazardous materials is guilty of a Class D Misdemeanor.

**30-08 SEXUAL OFFENSES**

**30-08-01. Prostitution**

A. Any person who solicits or practices prostitution or knowingly provides, keeps, rents, leases, or otherwise maintains any place or premises for the purpose of prostitution is guilty of prostitution.

B. Any person found guilty of prostitution is guilty of a Class D Misdemeanor.

**30-08-02. Indecent Exposure**

A. Any person who exposes his or her genitals or anus or a female who exposes the nipple of her breast(s) to another person in public, with reckless disregard for whether a reasonable person would be offended or alarmed by the act, is guilty of indecent exposure.

B. Any person found guilty of indecent exposure is guilty of a Class E Misdemeanor.

**30-08-03. Public Sexual Indecency**

A. Any person who intentionally, knowingly, or recklessly engages in an act of sexual conduct, including any act involving contact between a person's mouth, vulva, genitals or anus, and the genitals or anus of another person or animal in public or before another person with reckless disregard as to whether a reasonable person would be offended or alarmed by such act, is guilty of public sexual indecency.

B. Any person found guilty of public sexual indecency is guilty of a Class C Misdemeanor.

**30-08-04.      Knowingly Transmitting a Contagious Disease**

A.      Any person who knows, or has, or has reason to know that he or she is infected with a venereal disease, active tuberculosis, Acquired Immune Deficiency Syndrome (A.I.D.S.), or other contagious disease capable of being transmitted by sexual contact or through use of unsanitary drug paraphernalia, who willfully exposes another to the disease without their knowledge and consent and such exposure causes the other to be infected with the contagious disease is guilty of knowingly transmitting a contagious disease.

B.      Any person found guilty of knowingly transmitting a contagious disease is guilty of a Class A Misdemeanor.

**30-08-05.      Sexual Assault**

A.      Any person who engages in sexual intercourse or oral sexual contact without consent of another person is guilty of sexual assault.

B.      Any person found guilty of sexual assault is guilty of a Class B Misdemeanor.

C.      In addition to any sentence imposed under this section, if the person found guilty of sexual assault has previously been convicted of sexual assault, the person shall not be eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough, or release from confinement until the sentence imposed by the Court has been served. The sentence imposed under this section shall be consecutive to any other sentence imposed.

**30-08-06.      Sexual Assault of a Spouse**

A.      Any person who engages in sexual intercourse or oral sexual contact with his or her spouse without the consent of the spouse by the use or threat of force or violence against the spouse or another person is guilty of sexual assault of a spouse.

B.      Any person found guilty of sexual assault of a spouse is guilty of a Class B Misdemeanor.

C.      In addition to any sentence imposed under this section, if the person found guilty of sexual assault of a spouse has previously been convicted of sexual assault of a spouse, the person shall not be eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough, or release from confinement until the sentence imposed by the Court has been served. The sentence imposed under this section shall be consecutive to any other sentence imposed.

## **30-10 MARITAL AND FAMILIAL OFFENSES**

### **30-10-01. Bigamy**

A. Any person who marries one or more persons while already having a spouse is guilty of bigamy, unless such spouse has been missing for five successive years or more or either spouse has been granted a divorce by a court of competent jurisdiction.

B. Any person found guilty of bigamy is guilty of a Class C Misdemeanor.

### **30-10-02. Incest**

A. A person who has sexual intercourse with another person knowing that he or she and such person are related, whether naturally or through adoption, as any of the following is guilty of incest:

1. Parent and child,
2. Grandparent and grandchild (any degree),
3. Siblings,
4. Uncle and niece/nephew,
5. Aunt and nephew/niece, or
6. First cousins.

B. A person found guilty of incest is guilty of a Class C Misdemeanor.

### **30-10-03. Domestic Violence**

A. Any person who does either of the following shall be prosecuted for Domestic Violence against a household member:

1. attempts to commit a battery against a household member; or
2. any unlawful act, threat, or menacing conduct that causes a household member to reasonably believe that he or she is in danger of receiving an immediate battery.

B. Any person found guilty of domestic abuse is guilty of a Class E Misdemeanor. In addition, the individual's firearms shall be forfeited to the Court and such individual shall be required to turn over all firearms in their possession to the Police Department.

### **30-10-04. Aggravated Assault Against a Household Member**

A. Any person who intentionally or knowingly commits the following is guilty of Aggravated Assault on a Household Member:

1. places a Household Member in reasonable apprehension of immediate physical injury; or
2. threatens a Household Member with a deadly or dangerous weapon; or

3. threatens a Household Member with intent to commit physical injury.

B. Any person found guilty of aggravated Assault against a household member is guilty of a Class C Misdemeanor. In addition, the individual's firearms shall be forfeited to the Court and such individual shall be required to turn over all firearms in their possession to the Police Department.

C. In addition, any deadly or dangerous weapon used to commit the offense shall be forfeited by order of the Court to the Isleta Police Department and such individual shall be required to turn over all firearms in his/her possession to the Isleta Police Department.

*Amended by Tribal Council Motion on September 20, 2017, a vote count of 7-0-0.*

**30-10-05. Battery Against a Household Member**

A. Any person who intentionally or knowingly touches or applies force to a Household Member in an unlawful, rude or angry manner is guilty of Battery on a Household Member.

B. Any person found guilty of Battery on a Household Member is guilty of a Class C Misdemeanor.

C. In addition, any dangerous or deadly weapon used to commit the offense shall be forfeited by order of the Court to the Isleta Police Department and such individual shall be required to turn over all firearms in his/her possession to the Isleta Police Department.

*Amended by Tribal Council Motion on September 20, 2017, a vote count of 7-0-0.*

**30-10-06. Elder Abuse**

A. Any person who intentionally inflicts physical pain, injury, or unlawful confinement upon an elder is guilty of elder abuse.

B. Any person found guilty of elder abuse is guilty of a Class C Misdemeanor. In addition, the individual's firearms shall be forfeited to the Court, and such individual shall be required to turn over all firearms in their possession to the Police Department.

**30-10-07. Neglect of an Elder**

A. Any person who is responsible for the care, or who assumes responsibility for the care of, an elder's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the elder is guilty of neglect of an elder.

B. Any person found guilty of neglect of an elder is guilty of a Class D. Misdemeanor,

C. If the elder dies as a result of the neglect, then the penalty for violation is a Class A Misdemeanor.

**30-10-08. Financial Abuse of an Elder**

A. Any person who takes, uses, converts, extorts, coerces, or steals the property of an elder shall be guilty of financial abuse of an elder.

B. Any person found guilty of financial abuse of an Elder is guilty of a Class D Misdemeanor.

**30-10-09. Assault on a Household Member**

A. Any person who intentionally, knowingly or recklessly commits the following is guilty of Assault on a Household Member:

1. attempts to commit battery upon a household member; or
2. places a household member in reasonable apprehension of an immediate battery.

B. A person found guilty of Assault on a Household Member is guilty of a Class D Misdemeanor.

C. In addition, any deadly or dangerous weapon used to commit this offense shall be forfeited by order of the Court to the Isleta Police Department and such individual shall be required to turn over all firearms in his/her possession to the Isleta Police Department.

*Enacted by Tribal Council Motion on September 20, 2017, a vote count of 7-0-0.*

**30-10-10. Aggravated Battery on a Household Member**

A. Any person who intentionally or knowingly commits the following on a Household Member is guilty of Aggravated Battery on a Household Member:

1. causes physical injury or temporary disfigurement; or
2. touches or applies force with a deadly or dangerous weapon; or
3. causes serious physical injury.



B. Any person found guilty of Aggravated Battery on a Household Member causing physical injury or temporary disfigurement is guilty of a Class B Misdemeanor.

C. Any person found guilty of Aggravated Battery on a Household Member causing serious physical injury or with a deadly or dangerous weapon is guilty of a Class A Misdemeanor.

D. In addition, any deadly or dangerous weapon used to commit the offense shall be forfeited by order of the Court to Isleta Police Department and such individual shall be required to turn over all firearms in his/her possession to the Isleta Police Department.

*Enacted by Tribal Council Motion on September 20, 2017, a vote count of 7-0-0.*

### **30-11 ABUSE OF PRIVACY**

#### **30-11-01. Defamation**

A. Any person who, with malice towards another and with intent to harm another's reputation or relationship with others, makes, publishes, declares, sells, circulates, or otherwise communicates to any third person in an unprivileged communication a statement, knowing the statement is false or in reckless disregard of the truthfulness of such statement, which exposes such other person to public hatred, contempt, or ridicule is guilty of defamation. It shall be sufficient to constitute defamation if the natural consequence of the communication is injury to the person although no actual injury to his or her reputation has been proven.

B. Any person found guilty of defamation is guilty of a Class D Misdemeanor.

C. It is a defense to the charge of defamation if the statement is true.

D. No statements made in the course of a legislative or judicial proceeding, whether true or false, shall be considered defamation.

#### **30-11-02. Disturbance, Removal or Destruction of Antiquities**

A. Any person who, without proper authority, disturbs, removes, excavates, injures, destroys, procures, or employs a person to disturb, remove, excavate, injure, or destroy any historic or prehistoric ruin, sacred object or other object of antiquity, monument, artifact, or funerary is guilty of disturbance, removal or destruction of antiquities.

B. Any person found guilty of disturbance, removal, or destruction of antiquities is guilty of a Class A Misdemeanor.

### **30-11-03. Defacing Tombs, Burial Grounds**

A. Any person who intentionally or knowingly defaces, breaks, destroys, or removes any tomb, monument, gravestone, or marker, including natural vegetation as a marker, pertaining to the burial of any human being is guilty of defacing a tomb or burial ground.

B. Any person found guilty of defacing a tomb or burial ground is guilty of a Class C Misdemeanor.

## **30-12 TRESPASS**

### **30-12-01. Criminal Trespass**

A. Any person who traverses private lands or other private property not his or her own, when notice against trespassing has been reasonably communicated by the owner or a consent to pass has been withdrawn, or allows livestock under his or her control to occupy or graze on the lands of another is guilty of criminal trespass.

B. Any person found guilty of criminal trespass is guilty of a Class D Misdemeanor.

### **30-12-02. Tampering With No Trespass Sign**

A. Any person who defaces, marks, removes, or otherwise tampers with a "No Trespass" sign is guilty of tampering with a no trespass sign.

B. Any person found guilty of tampering with a no trespass sign is guilty of a Class E Misdemeanor.

### **30-12-03. Misusing Public Property**

A. Any person who, without proper authority uses public property for an unlawful purpose, knowingly enters public property when such property is not open to the public, uses or remains after having been requested to leave, or damages any public property is guilty of misuse of public property.

B. Any person found guilty of misuse of public property is guilty of a Class D Misdemeanor.

### **30-12-04. Breaking and Entering**

A. Any person who, without authority enters any vehicle, watercraft, aircraft, dwelling, or other structure by fraud, deception, or the dismantling of any part of the vehicle, etc., or dismantling any device used to secure the vehicle, etc. shall be guilty of breaking and entering.

B. Any person found guilty of breaking and entering is guilty of a Class C Misdemeanor.

**30-12-05. Criminal Damage to Property**

A. Any person who defaces, damages, or tampers with the property of any person, organization, corporation, government, or other entity in such a manner that their action impairs its functionality or value is guilty of criminal damage to property.

B. Any person found guilty of criminal damage to property is guilty of a Class D Misdemeanor.

**30-12-06. Aggravated Criminal Damage to Property**

A. Any person who defaces, damages, tampers with or in any way alters the appearance of any tribally-owned building or structure, or any personal property, or place used for religious and cultural ceremonies, or any building, structure, or place used as a school or as an educational facility, or any cemetery, mortuary, or other facility used for the purpose of burial or memorializing the dead is guilty of aggravated criminal damage to property.

B. Any person found guilty of aggravated criminal damage to property is guilty of a Class C Misdemeanor.

**30-12-07. Theft**

A. Any person who unlawfully takes or exercises control of property not his or her own, whether or not possession was originally obtained with consent of the owner, with the intent of permanently depriving the owner of the value or use of the property is guilty of theft.

B. Any person found guilty of theft is guilty of a Class D Misdemeanor.

C. Any person who commits theft and utilizes a dangerous weapon in furtherance of the crime shall be guilty of a Class B Misdemeanor.

**30-12-08. Shoplifting**

A. Any person who willfully takes possession of any goods offered for sale by any mercantile establishment, without the consent of the owner or manager, or who willfully conceals or attempts to conceal any goods offered for sale on himself or herself or among his or her belongings, or on the person or the belongings of another, with the intent to convert such goods to his or her own use without paying for them, is guilty of shoplifting.

B. Any person found guilty of shoplifting is guilty of a Class E Misdemeanor.

**30-12-09. Fraud**

A. Any person who obtains property or anything of value that belongs to another by false representation, willful misrepresentation of fact; or by failure to reveal facts, which he or she knows should be revealed, is guilty of fraud.

B. Any person found guilty of fraud is guilty of a Class D Misdemeanor.

**30-12-10. Embezzlement**

A. Any person who converts anything of value, which has been entrusted to him or her, with the fraudulent intent to deprive the owner thereof is guilty of embezzlement. Each conversion constitutes a separate offense of embezzlement.

B. Any person found guilty of embezzlement is guilty of a Class C Misdemeanor.

**30-12-11. Extortion**

A. Any person who compels or induces another person to deliver property to himself or herself or to a third person, by threatening to: (1) cause physical injury to a person, (2) cause damage to property, (3) accuse a person of a crime or cause criminal charges to be instituted against a person, (4) expose a secret or publicize an asserted fact, whether true or false, tending to subject a person to hatred, contempt, or ridicule, or (5) kidnap a person is guilty of extortion.

B. Any person found guilty of extortion is guilty of a Class C Misdemeanor.

**30-12-12. Issuance of Bad Checks**

A. Any person who knowingly issues a check without sufficient funds for the payment in full of the check and any other checks outstanding at the time of issuance is guilty of issuance of bad checks.

B. Any person found guilty of issuance of a bad check is guilty of a Class E Misdemeanor.

**30-12-13. Forgery**

A. Any person who, with intent to defraud, alters, falsely signs, or completes any written instrument, or utters any forgery, is guilty of forgery.

B. Any person found guilty of forgery is guilty of a Class C Misdemeanor.

**30-12-14. Receiving Stolen Property**

A. Any person who intentionally buys, receives, retains, disposes of, conceals, or aids in the concealing of any property which he or she knows, or should know, has been obtained by theft, extortion, fraud, or other unlawful means is guilty of receiving stolen property.

B. Any person found guilty of receiving stolen property is guilty of a Class D Misdemeanor.

**30-12-15. Unlawful Disposal, Removal, or Concealment of Encumbered Property**

A. Any person who knowingly and with the intent to defraud, sell, transfer, remove, conceal, or otherwise disposes of any security interest, chattel, mortgage, or other property with a lien or encumbrance attached and without the written consent of the owner is guilty of unlawful disposal, removal, or concealment of encumbered property.

B. Any person found guilty of unlawful disposal, removal or concealment of encumbered property is guilty of a Class D Misdemeanor.

**30-12-16. Unlawful Disposal of Decedent's Estate**

A. Any person who knowingly and with the intent to defraud, sell, transfer, remove, conceal, or otherwise dispose of any property of a decedent's estate before the determination and disposition of the estate by devise, to heirs, or to other distributees is guilty of unlawful disposal of decedent's estate.

B. Any person found guilty of unlawful disposal of a decedent's estate is guilty of a Class D Misdemeanor.

**30-12-17. Unlawful Burning**

A. Any person who sets a fire or allows a fire to escape, leaves a campfire burning unsupervised, or causes a fire to be started by means of a lit cigar, cigarette, match or firework causing damage to any vegetation, forest, or structures is guilty of unlawful burning.

B. Any person found guilty unlawful burning is guilty of a Class D Misdemeanor.

**30-12-18. Arson**

A. Any person who intentionally and willfully starts a fire or causes an explosion with the purpose of destroying or damaging any structure or property, to collect

insurance, or to cause damage to any public property, utility line, or railway structure, or injure any person or animal is guilty of arson.

- B. Any person found guilty of arson is guilty of a Class B Misdemeanor.

### **30-12-19 Burglary**

A. Any person who intentionally enters any building, dwelling, enclosed railroad car, enclosed portion of any boat or vessel, enclosed cargo portion of a truck or trailer, or a motor home or other motorized type of a home, or a trailer home without consent of the person in lawful possession and with intent to steal or commit a crime is guilty of burglary.

- B. Any person found guilty of burglary is guilty of a Class C Misdemeanor.

### **30-12-20 Unauthorized Harboring of a Non-Tribal Member**

- A. As used in this section:

(1) “non-tribal member” means an Indian, who is not a recognized tribal member of the Pueblo of Isleta or a Non-Indian person.

(2) “residency” means the act of dwelling on Pueblo of Isleta lands for a period of five (5) consecutive days or longer, two (2) or more consecutive weekends, or seven (7) or more intermittent days in a thirty-day period.

(3) “tribal member” means an Indian, who is a recognized tribal member of the Pueblo of Isleta.

B. A Pueblo of Isleta tribal member who allows a non-tribal member to reside on a property within the Pueblo of Isleta’s exterior boundaries after being subject to a notice or order prohibiting that non-tribal member from residing on the Pueblo of Isleta is guilty of a Class B Misdemeanor. A tribal member previously convicted under this section shall be guilty of a Class A Misdemeanor.

### **30-12-21 Unauthorized Entry or Residency**

- A. As used in this section:

(1) “non-tribal member” means an Indian, who is not a recognized tribal member of a Pueblo of Isleta.

(2) “residency” means the act of dwelling on Pueblo of Isleta lands for a period of five (5) consecutive days or longer, two (2) or more consecutive weekends, or seven (7) or more intermittent days in a thirty-day period.

B. A non-tribal member shall not enter the Pueblo of Isleta's exterior boundaries when notice of or a barrier against entry has been erected, posted or otherwise reasonably communicated or a consent to enter has been withdrawn.

C. A non-tribal member shall not reside within the Pueblo of Isleta's exterior boundaries without prior authorization from the Pueblo of Isleta.

D. Any non-tribal member found guilty of unauthorized entry or residency is guilty of a Class D Misdemeanor. A non-tribal member previously convicted under this section shall be guilty of a Class C Misdemeanor.

### **30-13 ANIMALS**

#### **30-13-01. Cruelty to Animals**

A. Any person who recklessly or maliciously inflicts injury, pain, suffering, or death upon any animal, or subjects any animal to abandonment, cruel mistreatment, neglect, or deprivation of water or food is guilty of cruelty to animals.

B. Any person found guilty of cruelty to animals is guilty of a Class D Misdemeanor.

#### **30-13-02. Negligent Control of a Vicious Animal**

A. Any person who fails to control, confine, or unleashes an animal which is known to be vicious and while at large such animal causes an injury to another person is guilty of negligent control of a vicious animal.

B. Any person found guilty of negligent control of a vicious animal is guilty of a Class C Misdemeanor. Negligent control of a vicious animal which results in the death of a person is guilty of a Class A Misdemeanor. The animal(s) may be subject to forfeiture and euthanasia.

#### **30-13-03. Maintaining Prohibited Animals**

A. Any person who (1) maintains wild animals as pets, or (2) maintains a vicious dog breed for the purpose of dog fighting is guilty of maintaining prohibited animals.

B. Any person found guilty of maintaining prohibited animals is guilty of a Class D Misdemeanor. The animal(s) may be subject to forfeiture and euthanasia.

### **30-14 LIVESTOCK**

#### **30-14-01. Failure to Brand Livestock**

A. Every tribal member owning livestock shall have and use a brand on each animal; such brand shall be recorded in the office of the New Mexico Livestock Board. Cattle shall be branded by use of a hot iron. Sheep shall be branded with a paint brand. Any unbranded cattle, excepting calves with a branded mother, shall be subject to seizure by any tribal officer or livestock inspector and shall be handled and disposed of as an estray. Any person who fails to comply with this §30-14-01 is guilty of failure to brand livestock.

B. Any person found guilty of failure to brand livestock is guilty of a Class C Misdemeanor.

**30-14-02. Brands; Recording: Evidence of Ownership**

No brands except such as are recorded under the provisions of this Code shall be recognized in law as evidence of ownership of the livestock upon which such brand may be used. It shall be the duty of all persons to brand newly-acquired cattle with their duly registered brand as soon as practicable, notwithstanding the possession of a bill of sale. Nothing herein, however, shall be construed as relieving the owner of his duty to retain possession of any bill of sale.

**30-14-03. Brands: Property Subject to Sale, Assignment, and Descent**

Any duly registered brand shall be considered to be the personal property of the person and shall be subject to sale, assignment, transfer, devise, and descent.

**30-14-04. Using More than One Brand**

It shall be unlawful for any owner of livestock to use more than one brand, except that lawfully acquired livestock carrying previous owner's registered brand need not be rebranded if a valid bill of sale accompanies such livestock. The increase of such livestock shall be branded with the owner's registered brand except if prohibited by a mortgage or other lien. Any person who fails to comply with this §30-14-04 is guilty of using more than one brand.

B. Any person found guilty of using more than one brand is guilty of a Class C Misdemeanor.

**30-14-05. Brands of Minors: Responsibility of Parents or Guardians**

Minors, under 21 years of age, owning livestock separate from that of the parent or guardian may have a separate recorded brand, but the minor's parent or guardian shall be responsible for the proper use of any such brand by any such minor.

**30-14-06. Bills of Sale: Necessity and Presumptions: Definitions of Livestock**



A. No person shall buy, receive, sell, dispose of, or have in his or her possession any livestock unless the person selling or disposing of such livestock shall give, and the person buying or receiving such livestock shall take, a written bill of sale giving the number, kind, marks, and brand of each animal sold which shall meet the requirements set out in §30-14-07.

B. The possession of livestock, without having a written bill of sale meeting the requirements set out in §30-14-07 shall be prima facie evidence of illegal possession against any person charged with theft, unlawful possession, handling, driving, or killing any livestock.

C. For the purpose of this Section, livestock is defined as cattle, horses, asses, sheep, goats, swine, or the carcasses thereof.

#### **30-14-07. Bills of Sale: Requirements**

A. A duly executed bill of sale is an instrument in writing by which the owner or his or her authorized agent transfers to the buyer the title to livestock described therein and guarantees to defend said title against all lawful claims. It shall fully describe, in detail, the livestock and such description shall include marks, brands, and all other identification.

B. The seller shall sign his name to, and write in the bill of sale, his social security or driver's license number and his post office address in the presence of two (2) witnesses who are legal residents of Pueblo of Isleta, or in the event the transfer occurs off the Reservation, residents of the county where the transfer of the described animals takes place. The witnesses shall sign their names and indicate their post office addresses on the bill of sale. The bill of sale shall be executed the day of the transaction.

C. In lieu of the signatures of two (2) witnesses, the bill of sale may be acknowledged by a notary public or other officer authorized to take acknowledgements or may be witnessed and certified by any livestock inspector.

D. A registration certificate issued by a recognized purebred association properly identifying the animal and properly acknowledged by the secretary of the association may be used as proof of ownership.

E. An inspection certificate executed as a bill of sale and certified by any livestock inspector may be used as proof of ownership.

#### **30-14-08. Failure to Exhibit Bill of Sale of Livestock**

Any person who has purchased or received, or has in his possession any livestock either for himself or another, shall exhibit the bill of sale for the livestock at the reasonable request of any livestock inspector or other peace officer. Any person who fails to comply with this §30-14-08 is guilty of failure to exhibit bill of sale of livestock.

B. Any person found guilty of failure to exhibit a bill of sale of livestock is guilty of a Class C Misdemeanor.

**30-14-09. Failure to Obtain a Permit to Import Animals**

It shall be unlawful to bring any livestock into the Pueblo of Isleta Reservation without first having obtained, in writing, a permit to do so from a livestock inspector. The permit shall state the requirements to be complied with. Any person who fails to comply with this §30-14-09 is guilty of failure to obtain a permit to import animals.

B. Any person found guilty of failure to obtain a permit to import animals is guilty of a Class C Misdemeanor.

**30-14-10. Inspection of Brands and Earmarks of Exported Cattle**

It shall be the duty of the livestock inspector to cause to be inspected the brands and earmarks upon the cattle shipped or driven out of the Isleta Reservation and to cause to be kept and preserved a true and correct record of the result of such inspections; which record may be preserved by storage with the New Mexico State Sanitary Board; which record shall set forth the date of the inspection, the place where the inspection took place, and the person who made the inspection, the names and post office addresses of the owner, shipper, or claimant of the cattle so inspected, and the names and post office addresses of all persons in charge of such cattle at the time of the inspection, the destination of such cattle, as well as a list of all brands and earmarks upon the cattle so inspected, and the number and classification of such cattle.

**30-14-11. Failure to Hold Export Cattle for Inspection**

It shall be the duty of every person shipping or driving any cattle out of the Isleta Reservation to hold the same for inspection, as provided in this Code, and it shall be unlawful for any person to ship, drive, or in any manner remove beyond the boundaries of the Isleta Reservation any herd or brand of cattle until the same shall have been so inspected. Any person who fails to comply with this §30-14-11 is guilty of failure to hold export cattle for inspection.

B. Any person found guilty of failure to hold export cattle for inspection is guilty of a Class C Misdemeanor.

**30-14-12. Home Slaughter without Inspection**

It shall be unlawful to slaughter for home use any cattle without first obtaining a proper brand inspection from an authorized reservation brand inspector. Any person who fails to comply with this §30-14-12 is guilty of home slaughter without inspection.

B. Any person found guilty of home slaughter without inspection is guilty of a Class C Misdemeanor.

### **30-14-13. Offenses by Inspector**

No livestock inspector shall knowingly (1) make any false certificate, (2) swear falsely as to the truth of any report made by him, (3) accept any bribe or compensation other than the recognized amount provided by law, or (4) fail to perform any of the duties prescribed by law. Any livestock inspector who fails to comply with this §30-14-13 is guilty of offenses by inspectors.

B. Any person found guilty of offenses by inspectors is guilty of a Class C Misdemeanor.

### **30-14-14. Unbranded Cattle: Estrays**

In the case of dispute over ownership of branded or unbranded cattle, if the brand inspector is unable to determine ownership privately, such animal will be handled as an estray. It shall be sold and the proceeds turned over to the tribe.

### **30-14-15. Ownership: Possession**

If any duly authorized inspector should find any livestock or carcasses in the possession of any person, branded or unbranded, and such person in charge or possession of such livestock does not have a bill of sale or cannot furnish satisfactory proof of ownership, or said inspector has good reason to believe said livestock or carcass was stolen, the inspector shall seize and take possession of the same and retain possession until satisfactory evidence of ownership is produced or until such livestock or carcasses are disposed of as provided by law.

### **30-14-16. Officers May Stop Vehicles: Failure to have Certificate: Arrest and Seizure**

Any livestock inspector or tribal police officer shall be authorized to stop any vehicle transporting livestock or the carcasses thereof and demand from the person or persons operating said vehicle to show the certificate of brand inspection or other proof of ownership; and should any person or persons transporting said livestock or the carcasses thereof be unable to exhibit to such inspector or police officer said certificate, said inspector or officer is authorized and empowered to arrest, without warrant, any person or persons operating said vehicle and take possession of the same and the livestock or carcasses therein, and shall retain such possession until the person or persons operating such vehicle can produce satisfactory evidence that he, she or they, or the person or persons, firm, or corporation for whom the same is being transported is the lawful owner thereof, or until such livestock or carcasses are disposed of as hereinafter provided.

### **30-14-17. Sale of Carcasses to Prevent Loss by Spoiling**

If said inspector or police officer shall deem it necessary to sell said carcasses so taken, to prevent the loss of same by spoiling, they are empowered and authorized to do so, retaining the sale price thereof in their possession to be disposed of as hereinafter provided.

**30-14-18. Return to Owner: Sale of Livestock or Carcasses: Disposition of Proceeds**

If, within a period of ten (10) days, the ownership of said livestock or said carcasses is shown and established, said livestock or carcasses, or the proceeds from the sale thereof, shall be delivered to said owner. If, however, within said period the ownership of said livestock or carcasses is not shown or established, then, in that event, the monies derived from the sale of said livestock or carcasses shall be paid to the tribe; and said livestock shall be sold and disposed of in the manner now provided by law for the sale and disposition of estray animals, and the monies resulting therefrom shall be paid to the tribe.

**30-14-19. Definition of Carcasses**

Whenever the word "carcass" is used, it means one (1) or more carcasses or parts thereof not less than one-quarter of a carcass.

**30-14-20. Failure to Close Gate: Penalty**

All persons who open any gate in a grazing area shall close the same gate. Any person who shall fail to comply with this §30-14-20 is guilty of failure to close gate.

B. Any person found guilty of failure to close gate is guilty of a Class E Misdemeanor.

**30-14-21. Taking Up of Estray Animals**

No person shall take up estray animals except if the animal be found in the vicinity of his or her residence. When any person shall take up an estray, he or she shall immediately make out a written description of such animal and mail or deliver same to a livestock inspector.

**30-14-22. Fence Breaking: Penalty**

Any person breaking, cutting, or damaging the range-land fence shall be, upon conviction, subject to a forfeiture of not more than \$50.00. Additionally, any person who shall violate this Section shall be obligated at the time of his punishment to indemnify the owner of any fence for the damage that has followed there from or for the repairing of the fence valued according to the gravity of the offense.

**30-14-23. Earmarks: Recording**

Any stock grower may adopt and use an earmark and such mark will be used in evidence along with evidence in connection with the owner's recorded brand. In no case shall the person so marking the animal cut off more than one-half of the ear so marked; neither shall anyone mark by cutting both sides to a point.

**30-14-24. Unlawful Branding**

- A. Unlawful branding consists of:
  - 1. Branding or marking any animal that is the property of another with any brand or mark not the brand or mark of the owner of the animal.
  - 2. Altering any brand or mark upon any animal which is the property of another; or
  - 3. Using any brand unless such brand shall have been duly recorded in the office of the New Mexico Livestock Board, and the person holds a certificate from the Board certifying to the fact of such record.
- B. Any person who fails to comply with this §30-14-24 is guilty of unlawful branding.
- C. Any person found guilty of unlawful branding is guilty of a Class C Misdemeanor.

**30-14-25. Unlawful Disposition of Animal**

- A. Unlawful disposition of animal consists of:
  - 1. Skinning or removing without permission of the owner any part of the hide of any cattle found dead;
  - 2. Taking any livestock for use or work without the consent of the owner;
  - 3. Removing the livestock of another from its usual range without the consent of the owner;
  - 4. Contracting, selling, or otherwise disposing of any animal without consent of the owner; or
  - 5. Knowingly buying, taking, or receiving any animal without the consent of the owner.
- B. Any person who unlawfully disposes of an animal in contravention of §30-14-25 is guilty of unlawful disposition of animal.
- C. Any person found guilty of unlawful disposition of animal is guilty of a Class C Misdemeanor.

**30-14-26.      Illegal Confinement of Animals**

- A.      Illegal confinement of animals consists of:
1.      Taking and detaining any bull for the purpose of improving livestock without the consent of the owner;
  2.      Intentionally separating offspring of livestock from mother without the consent of the owner, provided that when milk cows which are actually used to furnish milk to the household or for dairy purposes have calves that are unbranded, such calves may be separated from their mother and enclosed; or
  3.      Confining or in any manner interfering with the freedom of, or selling or offering to sell, any freshly branded animal, unless such brand is one for which the person has a legally executed bill of sale from the owner of such brand, or unless such animals are with their mother, or unless such animals are the calves of milk cows when such milk cows are actually used to furnish milk for the household or for carrying on a dairy business; but, in every such case, the person, firm, or corporation separating calves from their mothers for either of these purposes shall, upon the demand of any peace officer or inspector, produce within a reasonable time the mother of each of such calves so that interested parties may ascertain if the cow does, or does not, claim and suckle such calf.

B.      Any person who fails to comply with this §30-14-26 is guilty of illegal confinement of animals.

C.      Any person found guilty of illegal confinement of animals is guilty of a Class C Misdemeanor.

**30-14-27.      Unlawful Taking of Big Game Wildlife**

A.      Any person who takes or attempts to take or possess any big game wildlife, including but not limited to deer, elk, bighorn sheep, bear, cougar, turkey, alive or dead, unless permitted by statute or other regulation of law of the Pueblo of Isleta, is guilty of the Unlawful Taking of Big Game Wildlife.

B.      Any person found guilty of Taking of Big Game Wildlife is guilty of a Class B misdemeanor. Any weapons utilized in furtherance of this crime are subject to forfeiture along with the carcass and hunting privileges.

## **30-15 CRIMES AGAINST PUBLIC PEACE**

### **30-15-01. Disorderly Conduct**

A. Any person who engages in fighting or provokes a fight, disrupts any lawful public or religious meeting, causes unreasonable noise or disturbance to others, or uses obscene language or gestures towards others in a public place, is guilty of disorderly conduct.

B. Any person found guilty of disorderly conduct is guilty of a Class E Misdemeanor.

### **30-15-02. Public Intoxication**

A. Any person who appears in a public place while under the influence of alcohol or a controlled substance or toxic vapor, which is not therapeutically administered for a medical purpose under the prescription or supervision of a person licensed to administer, prescribe, control or dispense the substance, shall be guilty of public intoxication, if the individual does any of the following:

1. Blocks or otherwise interferes with traffic on a highway or public vehicular area, or
2. Blocks or lies across or otherwise prevents or interferes with access to or passage across a sidewalk or entrance to a building, or
3. Grabs, shoves, pushes or fights another or challenges others to fight, or
4. Curses or shouts at or otherwise rudely insults others, or
5. Begs for money or other property.

B. Any person found guilty of public intoxication is guilty of a Class E Misdemeanor.

### **30-15-03. Allowing Loitering of Minors**

A. Any person owning a tavern, saloon, or bar and permits persons under the age of twenty-one (21) years to frequent or loiter on the premises without being accompanied by a parent or guardian is guilty of allowing loitering of minors.

B. Any person found guilty of allowing loitering of minors is guilty of a Class E Misdemeanor.

### **30-15-04. Serving Alcohol to Minors**

A. Any person who provides alcohol to or who owns a tavern, saloon, bar or retail establishment selling alcohol and permits persons under the age of twenty-one (21) years to purchase alcohol, is guilty of serving alcohol to minors.

B. Any person found guilty of providing or serving alcohol to minors is guilty of a Class C Misdemeanor.

**30-15-05. Use of Telephone to Intimidate, Threaten, Harass, or Offend**

A. Any person who uses the telephone, with the intent to terrify, intimidate, threaten, harass, or offend, or use obscene, lewd, or profane language to (1) suggest a lewd or lascivious act, (2) threaten to inflict injury or physical harm to a person or property, (3) to extort money or other things of value from a person, or (4) otherwise disturbs a person's peace, quiet, or right of privacy by repeated anonymous telephone calls is guilty of using the telephone to intimidate, threaten, harass or offend.

B. Any person found guilty of using the telephone to intimidate, threaten, harass, or offend is guilty of a Class E Misdemeanor.

**30-15-06. Participating in or Assisting a Criminal Gang**

A. Any person who organizes, manages, directs, or supervises a group of people or a gang, or entices or induces members of a gang or others to engage in violence or intimidation, or finances a gang's affairs, or hires, engages, or uses a minor for any conduct preparatory to or in completion of any criminal conduct of a gang; or commits an offense with the intent to promote or further the objectives of a gang is guilty of participating or assisting a criminal gang. Indicia of gang membership may include gang related paraphernalia, tattoos, clothing, or colors.

B. Any person found guilty of participating or assisting a criminal gang is guilty of a Class B Misdemeanor.

**30-15-07. Joyriding**

A. Any person who, without proper authority or the consent of the owner, drives, operates, or otherwise uses the motor vehicle of another, without intent to permanently deprive the owner of the vehicle is guilty of joyriding.

B. Any person found guilty of joyriding is guilty of a Class C Misdemeanor.

**30-16 INTERFERENCE WITH LAW ENFORCEMENT**

**30-16-01. Resisting, Evading, or Obstructing a Police Officer**

A. Any person who intentionally and willfully flees, prevents, or attempts to prevent a Police Officer from effecting an arrest, or from otherwise discharging his or her official duty by creating a substantial risk of physical harm to the officer or any other person by employing means of resistance which requires substantial force to overcome, or by knowingly making false, fraudulent, or unfounded reports or statements to an



officer, or by knowingly misrepresenting a fact to an officer is guilty of resisting, evading, or obstructing a Police Officer.

B. Any person found guilty of resisting, evading, or obstructing a Police Officer is guilty of a Class C Misdemeanor.

**30-16-02. Impersonating a Tribal Official**

A. Any person who impersonates a Tribal Official on Reservation lands, with the intent to induce another to submit to his or her pretended official authority, or rely upon his or her pretended official acts to the person's detriment is guilty of impersonating a Tribal Official.

B. Any person found guilty of impersonating a Tribal Official is guilty of a Class B Misdemeanor.

**30-16-03. Harboring a Fugitive**

A. Any person, other than a spouse, child, mother, father, or sibling who, with the intent to hinder prosecution, conviction, or punishment of another for an offense, renders assistance by concealing that person's identity; or warning that person of impending discovery, apprehension, or prosecution; or provides that person with shelter, money, transportation, a weapon, or a disguise; or prevents discovery by means of force, deception, or intimidation; or conceals, alters, or destroys physical evidence that might aid in the discovery, apprehension, prosecution, or conviction of that person is guilty of harboring a fugitive.

B. Any person found guilty of harboring a fugitive is guilty of a Class C Misdemeanor.

**30-16-04. Escape**

A. Any person who willfully escapes, attempts to escape, assists another in an escape from lawful custody, or fails to return to custody at a scheduled time is guilty of escape.

B. Any person found guilty of escape is guilty of a Class C Misdemeanor.

## **30-17 CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION**

### **30-17-01. Demanding Illegal Fees**

A. Any Tribal Official or tribal employee who knowingly requests or accepts anything of value greater than the fixed price for the execution of such services is guilty of demanding illegal fees.

B. Any person found guilty of demanding illegal fees is guilty of a Class C Misdemeanor.

### **30-17-02. Paying/Receiving Public Money For Services Not Rendered**

A. Any Tribal Official or tribal employee who knowingly pays or receives tribal government monies as salary or remuneration for services which have not in fact been rendered is guilty of paying or receiving public monies for services not rendered.

B. Any person found guilty of paying or receiving public monies for services not rendered is guilty of a Class C Misdemeanor.

### **30-17-03. Unlawful Interest in a Public Contract**

A. Any Tribal Official or tribal employee who receives anything of value, directly or indirectly, from a seller or purchaser of goods, services, or securities or any other thing of value from the Tribe without the public declaration of the transaction by filing of a statement with the Secretary's Office and publication in the Tribe's newspaper shall be guilty of unlawful interest in a public contract.

B. Any person found guilty of unlawful interest in a public contract is guilty of a Class B Misdemeanor.

### **30-17-04. Bribery**

A. Any person who gives or offers to give to another person, or who receives from another person, money, property, or any other thing of value with intent to influence a person in the discharge of his or her public duties is guilty of bribery.

B. Any person found guilty of bribery is guilty of a Class D Misdemeanor.

### **30-17-05. Soliciting a Bribe**

A. Any person who obtains or seeks to obtain money, property, or any other thing of value upon a claim or representation that he or she can or will influence the action of a public servant in the discharge of his or her public duties with the intent of doing so in an improper manner is guilty of soliciting a bribe.

B. Any person found guilty of soliciting a bribe is guilty of a Class D Misdemeanor.

**30-17-06. Acceptance of Bribe by a Witness**

A. Any person who has been called as a witness, or is likely to be called as a witness, and accepts, agrees to accept, or solicits money, property, or anything of value to testify falsely or withhold information in a judicial, administrative, legislative, or other fact-finding proceeding, or from a Police Officer is guilty of acceptance of a bribe by a witness.

B. Any person found guilty of acceptance of a bribe by a witness is guilty of a Class D Misdemeanor.

**30-17-07. Bribery, Intimidation or Retaliation Against a Witness**

A. Any person who gives or offers to give to a witness or a person likely to be called as a witness money, property, or anything of value, or who intimidates or threatens a witness to testify falsely or withhold information in a judicial, administrative, legislative, or other fact-finding proceeding or from a Police Officer who retaliates against a witness by causing bodily harm or injury to another person or property or threatening the release of information relating to the violation of a criminal is guilty of bribery, intimidation, or retaliation against a witness.

B. Any person found guilty of bribery, intimidation, or retaliation against a witness is guilty of a Class C Misdemeanor.

**30-17-08. Perjury**

A. Any person who knowingly makes a false statement while under oath, or induces another to do so, is guilty of perjury.

B. Any person found guilty of perjury is guilty of a Class B Misdemeanor.

**30-17-09. Malicious Prosecution**

A. Any person who procures, or attempts to procure, a criminal charge against an innocent person when knowing him/her to be innocent is guilty of malicious prosecution.

B. Any person found guilty of malicious prosecution is guilty of a Class E Misdemeanor.

### **30-17-10. Obstructing Judiciary or Officers**

A. Any person who shall willfully disobey an order, subpoena, warrant or commitment, duly issued, made or given by the Pueblo of Isleta Judiciary or any officer thereof, or who shall willfully disobey any lawful order of any officer of the Pueblo of Isleta Judiciary, or who shall willfully obstruct, interfere with or hinder any officer of the Pueblo of Isleta in the performance of his official duties shall be deemed guilty of Obstructing Judiciary or Officer.

B. Any person found guilty of Obstructing Judiciary or Officer is guilty of a Class C Misdemeanor.

*Enacted by Tribal Council March 12, 2013, Resolution 2013-021. Number reassigned.*

## **30-18 TOXIC AND CONTROLLED SUBSTANCES**

### **30-18-01. Unlawful Inhalation of Toxic Vapors**

A. Any person who inhales the vapors or fumes of glue, paint, gas, nitrous oxide, or any other toxic product or chemical substance for the purpose of intoxication, elation, euphoria, or to induce irrational behavior or dulling or distorting of the senses or mental processes is guilty of unlawful inhalation of toxic vapors.

B. Any person found guilty of unlawful inhalation of toxic vapors is guilty of a Class E Misdemeanor.

### **30-18-02. Possession of Controlled Substances**

A. Any person who knowingly carries on their person, within their vehicle, or otherwise possesses a controlled substance is guilty of possession of a controlled substance.

B. Any person found guilty of possession of a controlled substance is guilty of a Class C Misdemeanor.

C. It shall be an affirmative defense to the possession of controlled substances if the possession is for medical purposes under the prescription or supervision of a person licensed to administer, prescribe, control, or dispense the prescribed substances, or if peyote, it is sold, produced, traded, transported, or given away and intended for use in connection with the bona fide practice of a religious belief, or as an integral part of a religious exercise. This affirmative defense shall apply to medical cannabis, but only if the cannabis is: i) purchased from a medical dispensary authorized to engage in such sales by the State of New Mexico; and ii) subject to a valid and lawful

medical cannabis card issued by any state; and iii) within the Approved Maximum Limit as defined in this Title.

**30-18-03. Trafficking Controlled Substances or Toxic Substances**

A. Any person who knowingly sells, produces, trades, transports, gives away any controlled substance or vapor-releasing toxic substance, or other chemical substance capable of and used for the purpose of intoxication, elation, euphoria, or to induce irrational behavior, or dulling, or distorting of the senses or mental processes is guilty of trafficking controlled substances or toxic substances.

B. Any person found guilty of trafficking controlled substances or toxic substances is guilty of a Class B Misdemeanor.

C. It shall be an affirmative defense to trafficking controlled substances or toxic substances if the transaction, possession, production, or transportation is for medical purposes under the prescription or supervision of a person licensed to administer, prescribe, control, or dispense the prescribed substances, or if peyote, it is sold, produced, traded, transported, or given away and intended for use in connection with the bona fide practice of a religious belief, or as an integral part of a religious exercise. This affirmative defense shall apply to the transport of medical cannabis, but only if the cannabis is: i) purchased from a medical dispensary authorized to engage in such sales by the State of New Mexico; and ii) subject to a valid and lawful medical cannabis card issued by any state; but such defense shall not apply to the sale, production, or trade of medical cannabis; and iii) within the Approved Maximum Limit as defined in this Title.

**30-18-04. Possession, Use or Trafficking of Controlled or Toxic Substances in Drug Free Zones**

A. Any person who uses, possesses, sells, produces, trades, transports, or gives away any controlled substance, vapor-releasing toxic substance, tobacco, or prescription drugs for the purpose of becoming intoxicated within 1000 feet of school grounds, parks, or ceremonials grounds is guilty of possession, use, or trafficking controlled substances or toxic substances in a drug free zone.

B. Any person found guilty of possession, use, or trafficking controlled substances or toxic substances in a drug free zone is guilty of a Class C Misdemeanor.

C. It shall be an affirmative defense to the possession of prescription drugs, a controlled substance, tobacco, or vapor releasing toxic substances in a drug free school zone if the possession is for medical purposes under the prescription or supervision of a person licensed to administer, prescribe, control, or dispense the prescribed substances, or if used for its legally intended purpose.

**30-18-05. Possession of Drug Paraphernalia**

A. Any person who knowingly uses or possesses, with intent to use, equipment, products, and materials of any kind which are used, or intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance is guilty of possession of drug paraphernalia.

B. Any person found guilty of possession of drug paraphernalia is guilty of a Class E Misdemeanor.

C. It shall be an affirmative defense to the possession of drug paraphernalia if such paraphernalia or device serves medical purposes under the prescription or supervision of a person licensed to administer, prescribe, control, or dispense the prescribed substances. This affirmative defense shall apply to paraphernalia or devices relating to the possession or ingestion of medical cannabis subject to a valid and lawful medical cannabis card issued by any state.

#### **30-18-06. Trafficking of Toxic Substances to Minors**

A. Any person who sells, permits the sale of, attempts to sell, conspires to sell, trades, gives or transfers any tobacco, glue, paint, gas, or other toxic substance for the purpose of intoxication, elation, euphoria, or to induce irrational behavior or dulling or distorting of the senses or mental processes to a person under the age of eighteen (18) years, knowing the minor intends to use the substance as an intoxicant, is guilty of trafficking of a toxic substances to minors.

B. A person found guilty of trafficking of toxic substances to minors is guilty of a Class C Misdemeanor.

### **30-19 FRAUD AND INDIAN CRAFTS**

#### **30-19-01. Indian Arts and Crafts**

All items labeled or otherwise identified as an Indian art or craft must be handmade, meaning entirely made by hand, or handcrafted, meaning at least partly made by hand, by an enrolled tribal member of an Indian tribe that the Pueblo of Isleta acknowledges as a Tribe.

#### **30-19-02. Sale of Fraudulent Indian Arts and Crafts**

A. Any person who sells an item labeled or otherwise identified as an Indian art or craft when the item is not handmade or handcrafted by an enrolled tribal member of an Indian Tribe shall be guilty of the sale of fraudulent Indian arts and crafts.

B. Any Indian person found guilty of the sale of fraudulent Indian arts and crafts is guilty of a Class D Misdemeanor.

### **30-20 VICTIM'S RIGHTS ACT**

#### **30-20-01. Victim's Bill of Rights.**

A. All victims have a right to the following when dealing with the criminal justice system:

1. To be treated with fairness, respect, and dignity and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
5. To confer with the prosecution after the crime against the victim has been charged, before trial, or before any disposition of the case, and to be informed of the disposition.
6. To read pre-sentence reports relating to the crime against the victim when they are made available to the defendant.
7. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
8. To be heard at any proceeding when any post-conviction release from confinement is being considered.
9. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
10. The right to copies of any documents filed with the Court regarding the conviction, sentencing, imprisonment, escape or release of the accused.
11. To have at least one support person present during any hearings.

B. A victim's exercise or lack of exercising any right granted by this section shall not be grounds for dismissing a criminal proceeding or setting aside any conviction or sentence.

### **30-21 DEFINITIONS FOR TITLE 30**

#### **30-21-01. Scope**

The definitions within this Code section shall apply to the Law and Order Code of the Pueblo of Isleta, Title 30.

#### **30-21-02. Definitions**

1. **“Abuse”** means the infliction or allowing of physical injury, impairment of bodily function, disfigurement, the infliction of or allowing another person to cause serious emotional damage as evidenced by diagnosis of a medical doctor or psychologist or by severe anxiety, depression, withdrawal or outward aggressive behavior caused by the acts or omissions of an individual having care, custody, and control of a child. Abuse shall include inflicting or allowing sexual abuse, sexual conduct with a minor, sexual assault; molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, incest, or child prostitution.

2. **“Adult”** means a person who is eighteen (18) years of age or older.

3. **“Approved Maximum Limit”** applies only to provisions relating to lawful medical cannabis and means up to 425 total units of usable cannabis, which is the equivalent of 425 grams, or approximately 15 ounces, of dried usable cannabis plant material. For purposes of calculation under this section, one unit of usable cannabis shall consist of one gram of the dried leaves and flowers of the female cannabis plant, or 0.2 grams (200 milligrams) of THC for cannabis-derived products.

4. **“Cannabis”** means any product containing a concentration of more than 0.3% tetrahydrocannabinol (THC); however, any product containing a lower concentration of THC shall neither be considered cannabis nor a controlled substance for purposes of this Title.

5. **“Child, Youth, or Juvenile”** means an individual who is under the age of eighteen (18) years.

6. **“Close Pursuit”** means pursuit without unreasonable delay, and including close pursuit of a person who has committed a criminal offense, or who is reasonably suspected of having committed a criminal offense.

6. **“Controlled Substance”** means cannabis, cocaine, amphetamines, opiates, phencyclidine, barbiturates and such derivatives and other controlled substances as defined in 21 U.S.C. § 812 and any amendments thereto.



6. **“Court”** means the Pueblo of Isleta Tribal Court and Appellate Court.
7. **“Criminal Negligence”** means that a person fails to perceive a substantial and unjustifiable risk that a particular result will occur or that a particular circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
8. **“Criminal Offense”** means any illegal act defined as criminal by law.
9. **“Culpable Mental State”** means intentionally, knowingly, recklessly, or with criminal negligence.
10. **“Damaging”** means causing any physical or visual impairment to any surface or structure.
11. **“Dangerous Weapon” or “Dangerous Instrument”** means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing serious physical injury and includes, but is not limited to, any:
1. Air gun, CO<sub>2</sub> gun, stun gun, blowgun, explosive device, pistol, or other firearm;
  2. crossbow, bow and arrow;
  3. bayonet, dagger, switchblade, bowie knife, or other kind of knife, except a folded pocket knife;
  4. sling shot, club, or chain;
  5. sword or spear;
  6. metal knuckles; or
  7. any other instrument capable of causing serious physical injury.
12. **“Deadly Weapon”** means any instrument, including but not limited to a firearm or motor vehicle, used in such manner as to render it capable of causing death.
13. **“Defacing”** means any unnecessary act of substantially marring any surface or object, by any means, or painting any notice upon any structure, without permission from the owner.
14. **“Drive-by Shooting”** means intentionally discharging a firearm or any explosive device from a motor vehicle whether moving or stopped, at a person, another motor vehicle, or structure.
15. **“Elder”** means a person who is sixty (60) years old or older.

16. **“Estray”** shall mean any bovine animal, horse, mule, or ass found running at large upon public or private lands, either fenced or unfenced, in the Pueblo of Isleta, whose owner is unknown in the pasture section where found or which shall be fifty miles or more from the limits of its usual range or pasture, or that is branded with a brand that is not on record in the office of the Cattle Sanitary Board of New Mexico.

17. **“Execution”** means the legal process of seizing and selling property to satisfy an obligation to make full restitution pursuant and limited to this enactment.

18. **“Executive Authority”** means the Governor, First Lieutenant Governor, Second Lieutenant Governor, Sheriff, or Undersheriff, as set forth in Article IV of the Pueblo of Isleta Constitution.

19. **“Explosives”** means any chemical compound, mixture, or device for which the primary purpose is to function by an explosion.

20. **“Extradition Waiver”** means a voluntary acknowledgment in written form, by a fugitive, that he/she is voluntarily willing to surrender to the demanding jurisdiction and waive any extradition procedure.
21. **“Firearm”** means any weapon which propels a bullet or other object through the use of gunpowder.
22. **“Fireworks”** means anything manufactured, processed, or packaged for exploding, emitting sparks, or combustion which does not have another common use, but does not include fuel, a flare, a model rocket engine, tobacco products, a match, cigarette lighter, stove, furnace, candle, lantern, a sparkler not exceeding 36 inches, a device containing paper confetti.
23. **“Forged Instrument”** means a written instrument or document which has been altered, falsely signed, or falsely completed.
24. **“Fugitive”** means any person charged with a criminal offense who has fled from justice and the jurisdiction where the offense occurred.
25. **“Governor”** means the Chief Executive Officer of the Pueblo of Isleta Tribe.
26. **“Habeas Corpus”** has the same meaning as set forth in 25 U.S.C. Section 1303.
27. **“Household member”** as used within the Law and Order Code shall be defined as a spouse, former spouse, or family member including a relative, parent, present or former stepparent, present or former in-law, a co-parent of a child, or a person with whom a person has had a continuing personal relationship. Co-habitation is not necessary to be deemed a household member for the purposes of the Law and Order Code of the Pueblo of Isleta.
28. **“Intentional”** means that a person's conscious objective is to cause a particular result or to engage in a particular course of conduct.
29. **“Intoxication”** means the condition of a person whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol.
30. **“Judicial Officer”** means any Tribal Court Judge, Bailiff, Clerk, Prosecutor, and any attorney, advocate, or legal representative licensed to practice in Tribal Court and/or appearing in Court acting in his/her professional capacity.
31. **“Knowingly”** means that a person is aware or believes that the specified fact with regard to his/her conduct, omission, or circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

32. **“Lawful Custody”** means confinement by Court Order, physical, or constructive restraint by a Police Officer.

33. **“Litter”** includes any rubbish, refuse, waste water or material, paper, glass, cans, bottles, organic or inorganic trash, debris, filthy or odoriferous objects, dead animals, sewage or any foreign substance of whatever kind or description, including junked or abandoned vehicles, whether or not any of these items are of value.

34. **“Livestock inspector”** shall mean a livestock inspector duly authorized by the Tribe and appointed by the New Mexico Livestock Board.

35. **“Malicious”** means a deliberate act in an unlawful manner, with or without ill will.

36. **“Negligent”** means a person should have been aware of a substantial and unjustifiable risk with regard to his/her conduct or a specific result from his/her conduct, or that the conduct involves a significant deviation from the standard of care that a reasonable person would observe in that situation.

37. **“Necessity”** means food, shelter, or any other personal property that is necessary to live.

38. **“Offense”** means any criminal conduct prohibited by this Code.

39. **“Oral Sexual Contact”** means contact by mouth with the penis, vulva, or anus.

40. **“Person”** means every natural person, firm, partnership, association, or corporation and their legal successors.

41. **“Personal Property”** means any tangible property that is movable.

42. **“Physical Injury”** means the impairment of physical condition and includes, but is not limited to, any skin or bone bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bones, subdural hematoma, soft tissue swelling, injury to any internal organ, or any other physical injury which would imperil the health or welfare of a person.

43. **“Police Officer”** means a law enforcement officer who is employed by the Pueblo of Isleta Indian Tribe, any county, state, or federal law enforcement officer, or any other person deputized by the Pueblo of Isleta.

44. **“Producing”** means financing, directing, manufacturing, issuing, publishing, or advertising for pecuniary gain.

45. **“Prostitution”** means engaging in, agreeing to, or offering to engage in sexual intercourse or sexual contact for money, gratuities, or other consideration.

46. **“Public Office”** means any position of employment or appointment within the Pueblo of Isleta Tribe.

47. **“Public Place”** means an establishment open to the public, whether it is publicly or privately owned.

48. **“Public Servant”** means any employee, servant, agent, attorney, or appointed official or contractor of the Pueblo of Isleta Tribe.

49. **“Reckless”** means an act done in conscious disregard of a unjustifiable risk and in gross deviation from reasonable standards of conduct.

50. **“Reportable Conviction”** means a final conviction of a Sexual Offense, including any delinquency findings or adjudications of minors, or treatment at a mental facility for a sexual offense as defined by the law of the jurisdiction where convicted

51. **“Restitution”** means requiring a person found guilty of criminal conduct to compensate the victim(s) of such criminal conduct for any financial loss suffered due to their criminal conduct or to reimburse the Pueblo of Isleta Tribe for any costs incurred by the Pueblo of Isleta for the incarceration of such person.

52. **“School”** means any public, private, government, or parochial facility of instruction including a Head Start or kindergarten program, elementary school, or high school and any institution of higher learning, including a college or junior college.

53. **“School Grounds”** means the area within one thousand (1,000) feet of a school or its accompanying grounds, a school bus stop, or any school bus or vehicle that transports pupils to any school.

54. **“Security Officer”** means any person employed as a watchman, patrolman, bodyguard, private security guard, or other person who performs security guard services but does not include any regularly commissioned Police Officer.

55. **“Serious Physical Injury”** means physical injury which creates a risk of death, or which causes serious or permanent disfigurement, or serious impairment of health, or loss or protracted impairment of the function of any bodily organ or limb, or psychological/emotional impairment.

56. **“Sexual Conduct”** means actual or simulated act of sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex, penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure; sexual bestiality; sadomasochistic

abuse; lewd exhibition of the genitals, pubic, or rectal areas of any person; or defecation, urination, or masturbation for the purpose of sexual stimulation of the viewer.

57. **“Sexual Contact”** means any direct or indirect touching, fondling, or manipulating of any part of the genitals, anus, or female breast by any part of the body or by any object.

58. **“Sexual Intercourse”** means penetration into the vulva or anus by any part of the body or any object or manual masturbatory contact with the penis or vulva.

59. **“Spouse”** means a person's partner in marriage whom one is legally married to.

60. **“Tamper”** means any act of interference.

61. **“Toxic Substance”** means any chemical or substance which has the capacity to produce personal injury or illness to a person when ingested, inhaled, or absorbed through a bodily surface.

62. **“Tribal Council”** means the Pueblo of Isleta Tribal Council.

63. **“Tribe”** means the Pueblo of Isleta Tribe.

64. **“Victim”** means a person against whom a criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child, or other lawful representative, except if the person is in custody for an offense or is the accused.

65. **“Visual or Print Medium”** mean any film, photograph, videotape, negative, slide, book, magazine or other form of publication or photographic reproduction containing or incorporating in any manner any film, photograph, videotape, negative or slide.

66. **“Vulnerable Adult”** means a person who is vulnerable to assault because of the infirmities of aging or mental incompetence.

67. **“Warrant of Extradition”** means documents issued by any state or another Indian tribe in accordance with this extradition procedure, requesting the deliverance of a fugitive from justice.

68. **“Without Consent”** means coercion by the immediate use, or threatened use, of force against a person or property who is incapable of consent by reason of mental disorder, drugs, alcohol, sleep, or any other similar impairment of cognition, and such condition is known or should have reasonably been known to the defendant; intentional deception as to the nature of an act; or intentional deception as to identity causing a person to act in a way they may not otherwise act.

**30-22**

**EVALUATION, TREATMENT, AND COMMITMENT OF  
ADULTS WITH MENTAL HEALTH DISORDERS; FIREARMS  
PROTECTION**

**30-22-01. Involuntary Emergency Mental Health Evaluation, Detention, and Treatment**

- A. An Isleta Police Department officer may detain and transport an adult subject for emergency mental health evaluation and care in the absence of a court order if:
1. the subject is otherwise subject to lawful arrest;
  2. the officer has reasonable grounds to believe the subject has just attempted suicide;
  3. the officer, based upon the officer's own observation and investigation, has reasonable grounds to believe that the person, as a result of a mental disorder, presents a likelihood of serious harm to oneself or to others and that immediate detention is necessary to prevent such harm; or
  4. a physician, a psychologist, or a qualified licensed mental health professional agency has certified that the subject, as a result of a mental disorder, presents a likelihood of serious harm to oneself or to others and that immediate detention is necessary to prevent such harm. Such certification shall constitute authority to transport the person to an evaluation facility, including a facility outside of the jurisdiction of the Pueblo of Isleta.
- B. A court order is not required under this section. However, if an application is made to the Isleta Tribal Court, including by the subject's legal guardian, informal caretaker, or other household member, the Court may issue an order, including an *ex parte* order, that:
1. an Isleta Police Department officer shall transport the subject to an appropriate evaluation facility, even if such evaluation facility is outside of the jurisdiction of the Pueblo of Isleta;
  2. an Isleta Police Department officer shall transport the subject for a temporary hold at a detention facility, pursuant to subsection D of this chapter, if no mental health evaluation facilities are presently available; or
  3. the subject should not be detained or transported to an evaluation facility.
- C. In the event a proceeding is initiated under subsection B of this chapter, the Isleta Tribal Court may order, in its discretion, any of the additional relief:

1. Removal of firearms in the subject's possession and/or from the subject's household by the Isleta Police Department for a period of seven days, during which period the Isleta Police Department may file its own petition under the Extreme Risk Firearm Protection Act;
  2. Treatment by the Isleta Health Center without the subject's consent, including through medication administration and/or through sedation;
  3. A restraining order protecting other individuals from the subject if the subject poses a danger to those individuals; or
  4. Any other emergency relief deemed necessary and appropriate by the Court.
- D. If either the officer or the Isleta Tribal Court reasonably determines that no evaluation or in-patient treatment facility is immediately available to the subject, the subject may be transported to a detention facility for a temporary hold. Detention facilities shall be used as temporary shelter for such persons only in cases of extreme emergency for protective custody, and no person taken into custody under chapter shall remain in a detention facility longer than necessary, but in no instance longer than seven days. In the event detention is used, the Isleta Tribal Prosecutor shall immediately file a petition for a thirty day involuntary commitment under Sec. 30-22-02.
- E. If use of a detention facility is necessary, the proposed subject:
1. shall not be held in a cell with prisoners;
  2. shall not be identified on records used to record custody of prisoners;
  3. shall be provided adequate protection from possible suicide attempts; and
  4. shall be treated with the respect and dignity due every citizen who is neither accused nor convicted of a crime.

#### **30-22-02 Involuntary Mental Health Commitment of Adults for Thirty Days**

- A. Proceedings under this section may, but need not, be related to an emergency mental health transport or evaluation action taken under Sec. 30-22-01.
- B. Any of the following persons may petition the Isleta Tribal Court to order an involuntary mental health commitment of an adult subject for a period of thirty days:
1. The subject's court ordered guardian;



2. A person appointed by the subject through a properly executed healthcare power of attorney;
3. Any person with actual knowledge of the subject's behaviors and of the danger the subject poses to himself and herself or to others;
4. Any person sharing a household with the subject;
5. Any person providing care to the subject, regardless of whether such care is court ordered or not;
6. The subject's physician, psychologist, or qualified licensed mental health professional;
7. The Isleta Police Department;
8. The Isleta Prosecutor; or
9. The Isleta Legal Department.

C. The petition shall include:

1. A description of the specific behavior or symptoms of the subject that evidences a likelihood of serious harm oneself or to others; and
2. If available and feasible, an initial assessment by a physician, psychologist, or qualified license mental health professional; and
3. A list of prospective witnesses that have observed the subject's behaviors giving rise to the commitment petition, and a summary of the matters to which they will testify.

D. The petition shall be personally served on the subject and the subject's court-ordered guardian, if applicable. A hearing shall be held no later than seven days after personal service of such petition, unless the subject is presently detained, in which case the hearing shall be held no later than three days after personal service.

E. At the hearing, the subject shall be represented by the Isleta Public Defender or by other counsel appointed by the Isleta Tribal Court. The subject shall have the right to present evidence on the subject's behalf, to cross-examine witnesses, and to be present at the hearing. The presence of the subject may be waived upon a showing to the court that the subject knowingly and voluntarily waives the right to be present. A complete record of all proceedings shall be made.

- F. A court-appointed guardian for an adult subject involved in an involuntary commitment proceeding shall have automatic standing to appear at all stages of the proceeding and shall be allowed to testify by telephone or through affidavit if circumstances make live testimony too burdensome. If applicable, the Isleta Tribal Court shall include in its findings the guardian's opinion regarding the need for involuntary treatment or a statement detailing the efforts made to ascertain the guardian's opinion.
- G. Upon completion of the hearing, the court may order a commitment for evaluation and treatment not to exceed thirty days if the court finds by clear and convincing evidence that:
  - 1. as a result of a mental disorder, the subject presents a likelihood of serious harm to oneself or to others;
  - 2. the subject needs and is likely to benefit from the proposed treatment; and
  - 3. the proposed commitment is consistent with the treatment needs of the subject and with the least drastic means principle.
- H. In the event an order is issued under this section, the Isleta Tribal Court shall schedule recurring hearings to occur no later than ten days prior to the expiration of that order, in order to determine whether or not the involuntary commitment order shall be renewed for another thirty days. Each such hearing shall be conducted in conformance with the requirements of subsection E of this chapter.

### **30-22-03      Extreme Risk Firearm Protection Act**

- A. A petition for an extreme risk firearm protection order shall be filed only by the Isleta Police Department; provided that, if the respondent is a law enforcement officer employed by the Isleta Police Department, the petition shall be filed by the Isleta Prosecutor or by the Isleta Legal Department. Any person may request that the Isleta Police Department file a petition for an extreme risk firearm protection order under this Act.
- B. The Isleta Police Department shall file a petition under this Act upon receipt of credible information from a reporting party that gives the Isleta Police Department probable cause to believe that a respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm.
- C. A petition for an extreme risk firearm protection order shall state the specific statements, actions or facts that support the belief that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a

firearm.

- D. A petition for an extreme risk firearm protection order shall be made under oath and shall be accompanied by a sworn affidavit signed under penalty of perjury by the reporting party setting forth specific facts supporting the order.
- E. A petition for an extreme risk firearm protection order shall include:
  - 1. The name and address of the reporting party, except that such address shall be redacted upon request of the reporting party due to safety concerns;
  - 2. The name and address of the respondent;
  - 3. A description of the number, types and locations of firearms or ammunition that the petitioner believes the respondent has custody of, controls, owns or possesses;
  - 4. A description of the relationship between the reporting party and the respondent; and
  - 5. A description of any lawsuit, complaint, petition, restraining order, injunction or other legal action between the reporting party and the respondent.
- F. Upon the filing of a petition under this Act, the court may enter a temporary extreme risk firearm protection order *ex parte* and without a hearing, if the court finds from specific facts shown by the petition that there is probable cause to believe that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm before notice can be served and a hearing held.
- G. If the court finds probable cause pursuant to Subsection (F) of this Chapter, the court shall issue an *ex parte* temporary extreme risk firearm protection order enjoining the respondent from having in the respondent's possession, custody or control a firearm and shall further enjoin the respondent from purchasing, receiving or attempting to purchase or receive a firearm while the order is in effect. An *ex parte* temporary extreme risk firearm protection order shall include:
  - 1. A statement of the grounds supporting the issuance of the order;
  - 2. The date and time the order was issued;
  - 3. A statement that the order shall remain in effect until the hearing date, at which point the order may be extended for a year;

4. The date and time of the scheduled hearing, to be held within ten days of the issuance of the order;
  5. The text of Subsection (R) of this Chapter, requiring the respondent to relinquish firearms; and
  6. The text of Subsection (T) of this Chapter, directing criminal prosecution of a respondent who fails to relinquish firearms in conformity with the Order.
- H. The court shall conduct a hearing within ten days of the Petition's filing date or within ten days of the issuance of an *ex parte* temporary extreme risk firearm protection order, if applicable, to determine if a one-year extreme risk firearm protection order should be issued pursuant to this Chapter.
- I. If a respondent seeks a continuance of a hearing for a one-year extreme risk firearm protection order, the Court may in its discretion grant that continuance, but only upon issuing an *ex parte* temporary extreme risk firearm protection order that remains in effect until the actual hearing date.
- J. In determining whether grounds for any extreme risk firearm protection order exist, the court shall consider, at a minimum, the following:
1. Any recent act or threat of violence by the respondent against self or others, regardless of whether the act or threat involved a firearm;
  2. A pattern of acts or threats of violence by the respondent within the past twelve months, including acts or threats of violence against self or others;
  3. The respondent's mental health history;
  4. The respondent's abuse of controlled substances or alcohol;
  5. The respondent's previous violations of any court order;
  6. Previous extreme risk firearm protection orders issued against the respondent;
  7. The respondent's criminal history, including arrests and convictions for violent felony offenses, violent misdemeanor offenses, crimes involving domestic violence or stalking;
  8. The respondent's history of the use, attempted use or threatened use of physical violence against another person; of stalking another person; or of cruelty to animals; and

9. Any recent acquisition or attempts at acquisition of a firearm by the respondent.
- K. If, after hearing the matter, the court finds by a preponderance of the evidence that the respondent poses a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm, the court shall issue a one-year extreme risk firearm protection order.
- L. A one-year extreme risk firearm protection order shall include:
  1. A statement of the grounds supporting the issuance of the order;
  2. The date and time the order was issued;
  3. The date and time the order expires;
  4. Information pertaining to any recommendation by the court for mental health or substance abuse evaluations, if applicable;
  5. Notice that the respondent is entitled to request termination of the order prior to the expiration of the order.
  6. The text of Subsection (R) of this Chapter, requiring the respondent to relinquish firearms; and
  7. The text of Subsection (T) of this Chapter, directing criminal prosecution of a respondent who fails to relinquish firearms in conformity with the Order.
- M. A respondent may request that the court terminate a one-year extreme risk firearm protection order at any time prior to the expiration of the order. Notice of such a request must be personally served upon the Isleta Police Department, which must be provided the opportunity to object to the request.
- N. At any time not less than one month prior to the expiration of a one-year extreme risk firearm protection order, the Isleta Police Department may petition the court to extend the order. Each extension of the order shall not exceed one year. A petition filed pursuant to this subsection shall comply with the provisions of Subsections (A) through (E) as well as Subsection (Q) of this Chapter.
- O. A one-year extreme risk firearm protection order is a final, immediately appealable order.
- P. If the court declines to issue an extreme risk firearm protection order, the court shall state in writing the reasons for the court's denial and shall order the return of

any firearms to the respondent.

- Q. Any petition, *ex parte* temporary order, and one-year protection order filed or issued under this Chapter shall be personally served upon the respondent by the Isleta Police Department.
- R. A respondent who receives a temporary or one-year extreme risk firearm protection order shall relinquish all firearms in the respondent's possession, custody or control or subject to the respondent's possession, custody or control in a safe manner to the Isleta Police Department within forty-eight hours of service of the order or sooner at the discretion of the court.
- S. An Isleta Police Department law enforcement officer that takes possession of a firearm pursuant to this Chapter shall:
  - 1. Prepare a receipt identifying all firearms that have been relinquished or taken;
  - 2. Provide a copy of the receipt to the respondent;
  - 3. File the original receipt with the Isleta Tribal Court;
  - 4. Ensure that the Isleta Police Department retains a copy of the receipt.
- T. A person who fails to relinquish, or who possesses or has custody or control over, any firearm or who purchases, receives or attempts to purchase, possess or receive any firearm, in violation of an extreme risk firearm protection order is guilty of Unlawful Possession of Deadly or Dangerous Weapon under Sec. 30-06-02, a Class D Misdemeanor.
- U. The Isleta Police Department shall enter all orders issued under the Extreme Risk Firearm Protection Act into:
  - 1. The national instant criminal background check system;
  - 2. All federal or state or tribal computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms; and
  - 3. All computer-based criminal intelligence information systems and databases available in this state used by law enforcement agencies.
- V. Upon the expiration of or upon receiving notice of the termination of an extreme risk firearm protection order issued pursuant to the Extreme Risk Firearm Protection Act, the Isleta Police Department shall promptly remove the order from any tribal, state, or federal computer-based system into which it was entered

pursuant to Subsection U of this Chapter.

- W. Following the expiration or termination of an order issued pursuant to the Extreme Risk Firearm Protection Act and upon written request, the Isleta Police Department shall provide a sworn affidavit to the respondent affirming that the information contained within the order has been removed from all tribal, state, and federal databases and systems identified in Subsection U of this section.
- X. The Isleta Police Department shall store all firearms relinquished pursuant to an order issued under the Extreme Risk Firearm Protection Act.
- Y. Any firearm relinquished in accordance with the Extreme Risk Firearm Protection Act shall be returned to the respondent within ten days following the expiration or termination of an extreme risk firearm protection order, unless such firearm is otherwise considered to be evidence in an ongoing investigation or subject to applicable civil or criminal forfeiture laws. A respondent shall not be required to acquire any court order granting the return of relinquished firearms. Prior to returning any firearm under this subsection, the Isleta Police Department shall conduct a national criminal records check and shall return the firearms if the agency determines that the respondent is not prohibited from possessing firearms pursuant to state or federal law.

#### **30-22-04 Definitions**

For purposes of this Section, the following definitions shall apply:

- A. “least drastic means principle” means to provide treatment in the least restrictive environment appropriate for the individual subject, based upon the facts and circumstances of the specific subject, including that subject’s diagnoses, level of capacity, and the risk of harm that the subject poses to themselves or to others;
- B. “likelihood of serious harm to oneself or to others” means that it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to the person's self by violent or other self-destructive means, including grave passive neglect, or that the person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the person;
- C. “mental disorder” means substantial disorder of a person's emotional processes, thought or cognition that grossly impairs judgment, behavior or capacity to recognize reality, but does not mean developmental disability;
- D. “qualified licensed mental health professional” means an independent social worker, a licensed professional clinical mental health counselor, a marriage and

family therapist, a certified nurse practitioner or a clinical nurse specialist with a specialty in mental health, all of whom by training and experience are qualified to work with persons with a mental disorder;

- E. “reporting party” means a person who requests that a law enforcement officer file a petition for an extreme risk firearm protection order and includes a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, co-parent of a child, child, household member, person with whom a respondent has or had a continuing personal relationship, employer, qualified licensed mental health professional, or public or private school administrator;
- F. “respondent” means the person identified in or subject to an extreme risk firearm protection order petition;
- G. “subject” means the person identified in or subject to an emergency mental health evaluation and/or care or to an emergency mental health commitment or detention;
- H. “treatment” means any effort to accomplish a significant change in the mental or emotional condition or behavior of the subject.