



Law and Order Code

Pueblo of Isleta

Updated for Publication
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TITLE 31 – RESERVED FOR CHILDREN'S CODE

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 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 Secretarial 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 amendments to the following sections:

- 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 added the following sections:

- 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
- 30-18-03 Trafficking Controlled Substances or Toxic Substances
- 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.

Tribal Council adopted Resolution No. 2024-030 on March 7, 2024, codifying and amending the Pueblo of Isleta Fair Labor Standards Ordinance and codifying, renumbering, and striking all references to “Employee Grievance Review Board” and replacing the same with “Governor” in the following employment laws previously adopted by Tribal Council:

- Pueblo of Isleta Fair Labor Standards Ordinance originally adopted by Tribal Council through Resolution No. 2016-376 on September 1, 2016, and now codified within 02-04;
- Pueblo of Isleta Family and Medical Leave Ordinance, originally adopted by Tribal Council through Resolution No. 2016-377 on April 6, 2010 and thereafter amended on September 1, 2016, and now codified within 02-05;
- Pueblo of Isleta Labor Relations Ordinance, originally adopted by Tribal Council through Resolution 2016-375 on September 1, 2016, and now codified within 02-06;
- Pueblo of Isleta Employee Grievance Policy, as amended by Tribal Council through Resolution 2022-043 on May 4, 2022, and now reserved as 02-07.

Tribal Council adopted Resolution No. 2024-097 on September 19, 2024, adopting the Elections Code, by titling Title 03 – “Elections” and adding the following chapters:

- 03-01 – General Provisions
- 03-02 – Elections Officer and Elections Board
- 03-03 – Candidates
- 03-04 – Early Voting
- 03-05 – Polling Places – Conduct, Supervision, and Accessibility
- 03-06 – Counting and Tallying
- 03-07 – Voter Registration and Candidate Nominations
- 03-08 – Conducting Special and General Elections
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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:

- i. Auto accident injury;
- ii. Medical malpractice;
- iii. Product liability;
- iv. Slip and fall accidents;
- v. Workplace injury;
- vi. 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:

- i. “Employees” shall mean officials, employees, appointees, and volunteers duly authorized by the Pueblo of Isleta to perform authorized functions.
- ii. “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.
- iii. “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.
- iv. “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.

i. 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.

ii. 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:

- i. State the time, place and circumstances of the alleged loss or injury including the name of the public employee involved, if known;
- ii. State the name, address and residence of the claimant and his representative or attorney, if any;
- iii. State the amount of compensation or other relief demanded;
- iv. 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;"
- v. Provide the Pueblo of Isleta with a minimum of thirty (30) calendar days to respond; and

- vi. 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.

**02-02
RESERVED**

**02-03
RESERVED**

**02-04
PUEBLO OF ISLETA FAIR LABOR STANDARDS ORDINANCE**

02-04-01 Short Title

This chapter shall be known and cited as the Pueblo of Isleta Fair Labor Standards Ordinance.

02-04-02 Findings & Purpose

- A. The Tribal Council of the Pueblo of Isleta finds that –
 - i. All employees of the Pueblo of Isleta, its agencies, businesses, and entities, are entitled to fair wage and hour standards under the laws of the Pueblo of Isleta.
 - ii. It is the intent of the Tribal Council to provide all employees of the Pueblo of Isleta, its agencies, businesses, and entities, with fair wage and hour standards, which are consistent with the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201*et seq.*, as amended, notwithstanding that it is the position of the Pueblo of Isleta that the FLSA does not apply to it as a federally recognized Indian tribe.

02-04-03 Definitions

- A. For the purpose of this Chapter –
 - i. “employee” means an individual employed by the Pueblo of Isleta or any agency, business, or entity of the Pueblo of Isleta;
 - ii. “employer” means the Pueblo of Isleta or any agency, business, or entity of the Pueblo of Isleta;
 - iii. “Tribal Council” means the Tribal Council of the Pueblo of Isleta;

- iv. “Human Resources Department” means the Human Resources Department of the Pueblo of Isleta, or the Human Resources Department of a business or entity of the Pueblo of Isleta, as the case may be; and
 - v. “Pueblo” means the Pueblo of Isleta.
 - vi. “Public safety employee” means an employee of the Police Department, the Fire Department, or the Isleta Health Center Emergency Medical Services Department who is empowered by the Pueblo of Isleta to provide law enforcement or firefighting services, including rescue and ambulance services, animal control, dispatch, security, and code compliance. Public safety employees do not include the administrative staff of the Police and Fire Departments or the Isleta Health Center.
- B. Except as otherwise defined or provided in this Chapter, any term used in this Chapter shall be interpreted in accordance with, and have the meaning assigned to it by the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, as amended, and the regulations and guidance issued thereunder.

02-04-04 Minimum Wage.

Any employee shall be paid an hourly wage of not less than the minimum wage as may be established by resolution of the Tribal Council and, in the absence of Tribal Council action to adopt a higher minimum wage, shall be the federal minimum wage established from time-to-time pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, as amended.

02-04-05 Maximum Hours

- A. The base work period for all Pueblo of Isleta employees not employed a public safety position shall be 80 hours. Public safety employees of the Police and Fire Departments shall have a base work period of 84 hours. Public safety employees of the Emergency Medical Services Department of the Isleta Health Center shall have a base work period of 96 hours.
- B. If a non-exempt employee is authorized or directed to work hours in excess of their base work period, they shall receive overtime in the amount of one and one-half times the employee’s regular rate of pay.

02-04-06 Exemptions.

- A. Provided such employee performs the applicable primary duty and is paid on the applicable salary basis, Sections 4 and 5 of this Chapter shall not apply with respect to:
 - i. Any employee employed in a bona fide executive, administrative, or professional capacity, or computer-related occupation, or any other employee exempt from minimum wage and maximum hour requirements under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, as amended.

02-04-07 Enforcement; statements of compensation due; statute of limitations.

- A. Any employer who fails to comply with the terms of this Chapter shall be responsible to pay to the affected employee the amount of the employee's unpaid minimum wages, or the employee's unpaid overtime compensation, as the case may be.

- B. Any employee who believes he or she has not received the compensation due to such employee under the terms of this Chapter may seek retroactive payment of unpaid minimum wages or unpaid overtime compensation from an employer by filing with the applicable Human Resources Department a written statement of compensation due, which describes the basis upon which the employee claims additional compensation is due to such employee under the terms of this Chapter. Upon considering a statement of compensation due, the Human Resources Department shall, for cause shown, either:
 - i. Deny the claim for failing to show an employer's noncompliance with the terms of this Chapter; or
 - ii. Cause such retroactive payment of unpaid minimum wages or unpaid overtime compensation, as the case may be, to be made to remedy an employer's failure to comply with the terms of this Chapter.

- C. A decision by the applicable Human Resources Department under subsection (B) of this Section may be appealed by the affected employee or employer to the Governor within ten (10) calendar days after the decision. The Governor shall adopt procedures for receiving and deciding such an appeal.

- D. The sole remedy that the Governor is authorized to provide upon an appeal taken pursuant to subsection (C) of this Section shall be either to deny the claim for failing to show an employer's noncompliance with the terms of this Chapter or to order an employer to make retroactive payment of unpaid minimum wages or unpaid overtime compensation, as the case may be, to the affected employee. The Governor is not authorized to consider any other claim or provide any other remedy of any nature except as expressly provided in this subsection (D) of this Section.

- E. Any statement of compensation due for unpaid minimum wages or unpaid overtime compensation shall be forever barred unless filed with the applicable Human Resources Department within two (2) years after the date on which such wages or overtime compensation should have been included in an employee's paycheck, except that a statement of compensation arising out of a willful failure to comply with this Chapter may be filed with the applicable Human Resources Department within three (3) years after the date on which such wages or overtime compensation should have been included in an employee's paycheck.

02-04-08 Fair Labor Standards Act

- A. It is the intent of this Chapter to provide employees with fair wage and hour standards consistent with the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”), as amended. For the sole purpose of interpreting and enforcing this Chapter, and to the extent not in conflict with this Chapter or Pueblo law, an employer, the applicable Human Resources Department, or the Governor may consider the FLSA and regulations thereunder and relevant case law, for guidance or for the determination of any matter not provided herein; provided, however, that such federal law shall apply by reference only and shall not constitute a waiver of the Pueblo’s sovereign immunity for any claims or process brought under the FLSA.
- B. Notwithstanding anything to the contrary herein, the Pueblo may provide wage and hour standards applicable to employees of any Pueblo government agency or to the employees engaged in fire protection or law enforcement activities consistent with the FLSA.
- C. Except as expressly provided to the contrary herein, any employer in compliance with the FLSA shall be deemed to be in compliance with this Chapter.

02-04-09 Sovereign Immunity

Except as expressly provided in Section 6 of this Chapter for the sole purpose of process before the applicable Human Resources Department or the Governor, the Pueblo of Isleta reserves its sovereign immunity from legal process and unconsented suit to the fullest extent permitted by law.

02-04-10 Severability

The provisions of this Chapter are severable, If any provisions of this Chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application to other persons or circumstances shall not be affected thereby.

02-05

PUEBLO OF ISLETA FAMILY AND MEDICAL LEAVE ORDINANCE

02-05-01 Short Title

This chapter shall be known and cited as the Pueblo of Isleta Family and Medical Leave Ordinance.

02-05-02 Findings & Purpose

- A. The Tribal Council of the Pueblo of Isleta finds that –

- i. All employees of the Pueblo of Isleta, its agencies, departments, business enterprises, and entities, are entitled to family medical leave under the laws of the Pueblo of Isleta; and
- ii. It is the intent of the Tribal Council to provide all employees of the Pueblo of Isleta, its agencies, businesses, and entities, with family and medical leave, which is consistent with the terms of the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*, as amended (the “Federal Act”), notwithstanding that it is the position of the Pueblo that such Federal Act does not apply to it as a federally recognized Indian tribe.

02-05-03 Definitions

A. For the purpose of this Chapter –

- i. “eligible employee” means an employee who has been employed –
 - 1. For at least 12 months a Pueblo employer with respect to whom leave is requested under this Chapter; and
 - 2. For at least 1,250 hours of service with such Pueblo employer during the previous 12-month period.
- ii. “covered servicemember” means a member of the Armed Forces who is undergoing medical treatment, recuperation, or therapy, or is otherwise on the temporary disability retired lists, for a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces at any time during the period of 5 years preceding such treatment, recuperation, or therapy.
- iii. “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves –
 - 1. Inpatient care in a hospital, hospice, or residential medical care facility; or
 - 2. Continuing treatment by a health care provider.
- iv. “Human Resources Department” means the Human Resources Department of the Pueblo of Isleta, or the Human Resources Department of the Isleta Resort and Casino, the Isleta Business Corporation, or of another business or entity of the Pueblo of Isleta, as the case may be; and
- v. “Pueblo employer” means the Pueblo of Isleta, the Isleta Resort and Casino, the Isleta Business Corporation, or another business or entity of the Pueblo of Isleta, as the case may be.

- B. Except as otherwise defined or provided in this Chapter, any term used in this Chapter shall be interpreted in accordance with, and have the meaning assigned to it by the federal Act and the regulations and guidance issued thereunder.

02-05-04 Entitlement to Leave

- A. An eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:
- i. Because of the birth of a son or daughter of the eligible employee and in order to care for such son or daughter, provided, however, that such entitlement to leave shall expire 12 months after the date of such birth;
 - ii. Because of the placement of a son or daughter with the eligible employee for adoption or foster care, provided, however, that such entitlement to leave shall expire 12 months after the date of such placement;
 - iii. In order to care for the spouse, or a son, daughter, or parent, of the eligible employee, if such spouse, son, daughter, or parent has a serious health condition;
 - iv. Because of a serious health condition that makes the eligible employee unable to perform the function of the position of such employee; or
 - v. Because of a qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the eligible employee is on covered active duty, or has been notified of an impending call or order to covered active duty in the Armed Forces.
- B. **Servicemember family leave.** An eligible employee who is the spouse, son, daughter, parent or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period other care for the servicemember, provided, however, that such leave shall only be available during a single 12-month period.
- C. **Combined leave total.** During the single 12-month period described in subsection (B), an eligible employee shall be entitled to a combined total of 26 workweeks of leave under subsection (A) and (B) of this Section.
- D. **Paid/Unpaid Leave.** Except as provided in this subsection (D), leave granted under this Section may consist of unpaid leave.
- i. If a Pueblo employer provides paid leave for fewer than 12 workweeks, or 26 workweeks in the case of leave provided under subsection (B) of this section, the additional weeks of leave may be provided without compensation.
 - ii. An eligible employee may elect, or a Pueblo employer may require the employer, to use any of the accrued paid vacation leave, personal leave, or family leave of

the eligible employee for leave provided under paragraphs 1, 2, 3, and 5 of subsection (A) of this Section.

- iii. An eligible employee may elect, or a Pueblo employer may require the eligible employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the eligible employee for leave provided under paragraphs 3 and 4 of this subsection (A) of this Section or subsection (B) of this Section, except that nothing in this Ordinance shall require a Pueblo employee to provide paid sick leave or paid medical leave in any situation in which such Pueblo employee would not normally provide any such paid leave.

E. Foreseeable leave

- i. In any case in which the necessity for leave under paragraphs 1 or 2 of subsection (A) of this Section is foreseeable, the eligible employee shall provide the Pueblo employer with not less than 30 days' notice, or, if the circumstances make that impractical, as much notice as is practicable.
- ii. In any case in which the necessity for leave under paragraphs 3 and 4 of subsection (A) of this Section or under subsection (B) is foreseeable the eligible employee –
 - 1. Shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the Pueblo employer, subject to the approval of the applicable health care provider; and
 - 2. Shall provide the Pueblo employer with not less than 30 days' notice before the date the leave is to begin or, if the circumstances make that impractical, as much notice as is practicable.

F. Spouses employed by the same employer

- i. In any case in which a husband and wife entitled to leave under subsection (A) of this Section are each employed by a Pueblo employer, the aggregate number of workweeks of leave to which both may be entitled may be limited in a manner consistent with the terms of the Federal Act.

02-05-05 Certification

- A. A Pueblo employer may require that a request for leave under paragraph 3 or 4 of subsection (A) or subsection (B) of Section 4 of this Chapter be supported by a certification issued by the applicable health care provider in form and substance consistent with the requirements of the Federal Act, which the eligible employee shall provide in a timely manner.

- B. **Second Opinion.** In any case in which the Pueblo employer has reason to doubt the validity of the certification provided under subsection (A) of this Section for leave under paragraph 3, 4, or 5 of subsection (A) of Section 4, the Pueblo employer may require, at the expense of the Pueblo employer, that the eligible employee obtain the opinion of a second independent health care provider designated or approved by the Pueblo employer.
- C. **Resolution of conflicting opinions.** In any case in which the second opinion described in subsection (B) of this Section different from the opinion in the original certification provided under subsection (A) of this section, the Pueblo employer may require, at the expense of the Pueblo employer, that the eligible employee obtain the opinion of a third independent health care provided designated or approved jointly by the Pueblo employer and the eligible employee which shall be considered to be final and shall be binding on the Pueblo employer and the eligible employee.

02-05-06 Employment and benefits protection.

- A. Except as provided in subsection (E) of this Section, any eligible employee who take leave under Section 4 of this Chapter for the intended purpose of the leave shall be entitled, on return from such leave –
 - i. To be restored by the Pueblo employer to the position of employment held by the eligible employee when the leave commenced; or
 - ii. To be restored to an equivalent position with equivalent employee benefits, pay, and other terms and conditions of employment.
- B. The taking of leave under Section 4 of this Chapter shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.
- C. Nothing in this Section shall be construed to entitle any restored eligible employee to –
 - i. The accrual of any seniority or employment benefits during any period of leave; or
 - ii. Any right, benefit, or position of employment other than any right, benefit, or position to which the eligible employee would have been entitled had the eligible employee not take the leave.
- D. As a condition of restoration under subsection (A) of this Section for an eligible employee who has taken leave under paragraph 4 of this subsection (A) of Section 4, the employer may have a uniformly applied practice or policy that requires each such eligible employee to receive certification from the health care provider of the eligible employee that the eligible employee is able to resume work.

- E. A Pueblo employer may deny restoration under subsection (A) of this Section to any eligible employee that is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the Pueblo employer is –
- i. Such denial is necessary to prevent substantial and grievous economic injury to the operations of the Pueblo employer;
 - ii. The Pueblo employer notified the eligible employee of the intent of the Pueblo employer to deny restoration on such basis at the time the Pueblo employee determined that such injury would occur; and
 - iii. In any case in which the leave has commenced, the eligible employee elects not to return to employment after receiving such notice.
- F. Except as provided in paragraph 1 of this subsection (F), during any period that an eligible employee takes leave under Section 4 of this Chapter, the Pueblo employer shall maintain coverage under any group health plan for the duration of such leave at the level and under the conditions coverage would have been provided if the eligible employee had continued employment continuously for the duration of such leave.
- i. The Pueblo employer may recover the premium that the Pueblo employer paid to maintain coverage for the eligible employee under such group health plan during any period of unpaid leave under Section 4 of this Chapter if –
 1. The eligible employee fails to return from leave under Section 4 of this Chapter after the period of leave to which the eligible employee is entitled has expired; and
 2. The eligible employee fails to return to work for a reason other than –
 3.
 - a. The continuation, recurrence, or onset of a serious health condition that entitled the eligible employee to leave under paragraphs 3 or 4 of subsection (A) of Section 4 of this Chapter or under subsection (B) of Section 4; or
 - b. Other circumstances beyond the control of the eligible employee.

02-05-07 Enforcement; statements of noncompliance; statute of limitations.

- A. Subject to subsection (D) of this Section, any eligible employee who believe his or her Pueblo employer has failed to comply with the terms of this Chapter may filed a written statement of noncompliance with the applicable Human Resources Department, which describes the basis upon which the eligible employee claims his or her Pueblo employer has failed to comply with the terms of this Ordinance. Upon considering a statement of

noncompliance, the Human Resources Department shall, for cause shown, as the case may be –

- i. Make retroactive payment of any wages, salary, employment benefits, or other compensation denied or lost to such eligible employee by reason of the noncompliance;
 - ii. As appropriate, order employment or reinstatement; or
 - iii. Deny the claim for failing to show a Pueblo employer's noncompliance with the terms of this Chapter.
- B. A decision by the applicable Human Resources Department under subsection (A) of this Section may be appealed by the affected eligible employee or Pueblo employer to the Governor within ten (10) calendar days after the decision. The Governor shall adopt procedures for receiving and deciding such an appeal, subject to approval by the Tribal Council.
- C. The sole remedy that the Governor is authorized to provide upon an appeal taken pursuant to subsection (B) of this Section shall be either to uphold the denial of the claim or to grant the appropriate relief provided in subsection (A) of this Section. The Governor is not authorized to consider any other claim or provide any other remedy of any nature except as expressly provided in subsection (A) of this Section.
- D. Any claim or statement of noncompliance shall be forever barred unless filed with the applicable Human Resources Department within two (2) years after the date on which the last event constituting the alleged noncompliance, or within three (3) years for willful noncompliance.
- E. For the sole purpose of considering a statement of noncompliance or an appeal thereof, the applicable Human Resources Department or the Governor may reference the Federal Act, regulations and guidance issued thereunder, and relevant case law for guidance; provided, however, that such federal law shall apply by reference only.

02-05-08 Sovereign Immunity.

Except as expressly provided in Section 7 of this Chapter for the sole purpose of process before the applicable Human Resources Department or the Governor, the Pueblo of Isleta reserves its sovereign immunity, and that of Pueblo employers, from legal process and unconsented suit to the fullest extent permitted by law. Noting herein shall be construed as, nor deemed to be, a waiver of the Pueblo of Isleta's or a Pueblo employer's sovereign immunity for any claim brought pursuant to the Federal Act.

02-05-09 Severability.

The provisions of this Chapter are severable. If any provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application to other persons or circumstances shall not be affected thereby.

02-06

PUEBLO OF ISLETA LABOR RELATIONS ORDINANCE

02-06-01 Short Title

This chapter shall be known and cited as the Pueblo of Isleta Labor Relations Ordinance.

02-06-02 Findings & Purpose

- A. The Tribal Council of the Pueblo of Isleta finds that –
- i.** The Tribal council desires fair treatment of employees in the workplace and seeks to ensure proper management of the Pueblo of Isleta’s relationship with all employees of the Pueblo of Isleta;
 - ii.** The National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, does not apply to the Pueblo of Isleta, nor does it govern the Pueblo’s relationship with its employees, as its application would abrogate aspects of the Pueblo of Isleta’ inherent sovereignty, right of self-government, and right of exclusion;
 - iii.** The laws of the Pueblo of Isleta govern the Pueblo’s relationship with its employees and provide certain conditions of employment that are not subject to collective bargaining;
 - iv.** The Tribal Council desires to specify which conditions of employment are subject to collective bargaining in order to facilitate and encourage the amicable resolution of disputes between the Pueblo and its employees involving those conditions of employe; and
 - v.** It is the purpose of this Chapter to prescribe certain rights and obligations of the employees of the Pueblo which are balanced to meet the special governmental requirements and needs of the Pueblo. The provisions of this Chapter should be interpreted in a manner consistent with the need for an effective and efficient government.

02-06-03 Definitions.

- A. For the purpose of this Chapter –
- i.** “person” means an employee, labor organization, or employer;

- ii. “employee” means an individual employed by the Pueblo of Isleta, a department, or an agency thereof, or a wholly-owned business enterprise, or entity of the Pueblo of Isleta, but the term “employee” shall not include:
 - 1. A supervisor or management official;
 - 2. Any individual who participates in a strike in violation of Section 6 of this Chapter;
 - 3. An individual employed by the Pueblo of Isleta Gaming Regulatory Agency;
 - 4. Any individual employed in surveillance and security systems or any other internal control system designed to protect the integrity of the Pueblo’s gaming operations;
 - 5. Reserved.

- iii. “employer” means the Pueblo of Isleta, a department, agency thereof, a wholly-owned business enterprise, or entity of the Pueblo of Isleta, but the term “employer” shall not include:
 - 1. The Pueblo of Isleta Gaming Regulatory Agency;
 - 2. Reserved.

- iv. “labor organization” means an organization comprised in whole or in part of employees organized for the purpose of dealing with an employer concerning conditions of employment, but the term “labor organization” shall not include:

- v.
 - 1. An organization which participates in the conduct of a strike or imposes a duty or obligation to conduct, assist, or participate in such a strike in violation of Section 7 of this Chapter;
 - 2. An organization which does not have a license to conduct their labor organization activity on Pueblo lands issues pursuant to Section 10 of this Chapter; or
 - 3. An organization which bargains or otherwise advocates for personnel policies, practices, and matters affecting working conditions that are contrary to Pueblo law.

- vi. “conditions of employment: means personnel policies, practices, and matters affecting working conditions, but the term “conditions of employment” shall not include personnel policies, practices, and matters –

1. Relating to wages and hours of work approved by Tribal Council action, in accordance with Pueblo law;
 2. Relating to the classification of any position approved by Tribal Council action, in accordance with Pueblo law;
 3. Relating to any policies, practices, and matters that are provided for by the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* (“IGRA”), the regulations issued thereunder, or a tribal-state gaming compact entered into by the Pueblo pursuant to IGRA, a gaming ordinance enacted by the Pueblo in accordance with IGRA, or regulations issued by the Pueblo of Isleta Gaming Regulatory Agency and approved by Tribal Council;
 4. Relating to any policies, practices, and matter that are provided for in a contract or compact entered into by the Pueblo pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.*, and the regulations issued thereunder;
 5. Relating to any policies, practices, and matters that are provided for in any Pueblo of Isleta Employee Grievance Review Procedures;
 6. Relating to any policies, practices, and matter of Pueblo law which gives employment preference to Indians or members of the Pueblo of Isleta;
 7. Relating to benefits approved, provided, or set by Tribal Council; or
 8. To the extent that such policies, practices, and matters are provided for by any other Pueblo law.
- vii. “Pueblo law” means the Constitution of the Pueblo of Isleta, the customs and traditions of the Pueblo of Isleta, ordinances, resolutions, regulations, personnel policies approved by Tribal Council, and any other act of the Tribal Council, the Governor, the Tribal Court, and/or the Pueblo of Isleta Gaming Regulatory Agency which carries the force of law.
- viii. “Pueblo lands” means any and all lands under the jurisdiction of the Pueblo of Isleta.
- ix. “Pueblo” means the Pueblo of Isleta.
- x. “strike” means any employee who, by themselves or in concert with one or more other such employee, for the purpose of obstructing, impeding or suspending any activity or operation of his or her employer, strikes or willfully refuses to perform the duties of his or her employment.

- xi. “Governor” means the Governor of the Pueblo of Isleta.
- xii. “Tribal Council” means the Tribal Council of the Pueblo of Isleta.
- xiii. “collective bargaining agreement” means an agreement entered into as a result of collective bargain pursuant to the provisions of this Chapter and relating to conditions of employment.
- xiv. “collective bargaining” means the performance of the mutual obligation of the representative of an employe and the exclusive bargaining representative of employees in an appropriate unit of the of the employer to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to int this paragraph does not compel either party to agree to a proposal or to make a concession.
- xv. “exclusive bargaining representative” means a labor organization which is certified as such to assume the rights and obligations with respect to a unit of employees as provided in Section 11 of this Chapter.
- xvi. “matters of disagreement” means any conditions of employment subject to collective bargaining and which have resulted in a bargaining impasse.
- xvii. “management officials” means an individual employed by an employer in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the employer.
- xviii. “supervisor” means an individual employed by an employer having authority to hire, direct, assign, promote, reward, transfer, layoff, recall, suspend, discipline, or remove employees, if the exercise of the authority it not merely routine or clerical in nature but requires the exercise of independent judgment.

- B. The Tribal Council may issue an order excluding any agency or entity of the Pueblo from coverage under this Chapter if the Tribal Council determines that the provisions of this Chapter cannot be applied to that agency or entity in a manner consistent with the governmental needs and interests of the Pueblo.

02-06-04 Employee rights.

- A. Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activities, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Exception as otherwise provided in this Chapter, such right includes the right –

- i. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees pursuant to this Ordinance; and
- ii. To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to management, heads of agencies, and other officials of the Pueblo.

02-06-05 Management rights.

- A. Nothing in this Chapter shall affect the authority of any management official of any employer –
 - i. To determine the mission, budget, organization, number of employees, and internal security practices of the employer; and
 - ii. In accordance with applicable Pueblo law –
 - 1. To hire, assign, direct, layoff, and retain employees, or to suspend, remove, reduce in grade or pay, or to take other disciplinary action against such employees;
 - 2. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which employer operations shall be conducted;
 - 3. With respect to filling positions, to make selections from among candidates receiving employment preference under the preference laws of the Pueblo., or among properly ranked and certified candidates for promotion, or any other appropriate source, as the case may be; and
 - 4. To take whatever actions may be necessary to carry out the employer mission during emergencies.

02-06-06 Right to work.

Notwithstanding anything to the contrary in this Chapter, no individual shall be required as a condition of employment or continuation of employment on Pueblo lands, to: (i) resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization; (ii) become or remain a member of a labor organization; (iii) pay dues, fees, assessments or other charges of any kind or amount to a labor organization; (iv) pay to any charity or other third party, in lieu of such payments any amount equivalent to or a pro-rata portion of dues, fees, assessments or other charges regularly required of members of a labor organization; or (v) be recommended, approved, referred or clear through a labor organization.

02-06-07 No right to strike.

- A. It shall be unlawful for any employee or any labor organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify, participate in, or otherwise bring about a strike against any employer.
- B. Any employee who engages in a strike in violation of subsection (A) of this Section may, at the employer's sole discretion, by such action, be deemed to have terminated his or her employment and may, at the employer's sole discretion, thereafter be ineligible for employment in any position or capacity during the next twelve months by an employer.
- C. An labor organization that engages in a strike in violation of Subsection (A) of this Section shall, by such action, be deemed to have forfeited its license to conduct labor organization activity on Pueblo lands, shall thereafter be ineligible for such a license during the next twenty-four months, shall immediately cease and desist from conducting business and labor organization activity on Pueblo lands, shall have its exclusive representative status immediately revoked, and shall then immediately cease to be legally entitled and obligated to represent employees in the unit.

02-06-08 Unfair labor practices.

- A. For the purpose of this Chapter, it shall be an unfair labor practice for an employer –
 - i. To interfere with, restrain, or coerce any employee in the exercise by the employee of any right provided under Sections 4 or 6 of this Chapter;
 - ii. To encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
 - iii. To discipline or otherwise discriminate against an employee because the employee has exercised rights guaranteed under Section 4 or has filed a charge, affidavit, or has given any information or testimony under this Chapter;
 - iv. To dominate or interfere with the formation or administration of any labor organization;
 - v. To refused to bargain in good faith with any labor organization which is certified pursuant to Section 11 of this Chapter as an exclusive bargaining representative;
or
 - vi. To otherwise fail or refuse to comply with a provision of this Chapter.
- B. For the purpose of this Chapter, it shall be an unfair labor practice for any labor organization –

- i. To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this Chapter, including, without limitation, section 4 or 6 hereof;
- ii. To cause or attempt to cause an employer to discriminate against any employee in the exercise by the employee of any right under this Chapter, including, without limitation, Section 4 or 6 hereof;
- iii. To coerce, discipline, fine, or attempt coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;
- iv. To refuse or fail to collectively bargain in good faith with an employer;
- v. To call, or participate in, a strike, work stoppage, or slowdown, or picketing of an employer in a labor-management dispute, or any similar activity, or condone any such activity by failing to take action to prevent or stop such activity;
- vi. To interfere with, restrain, or coerce any employer in the exercise of the employer of any right under Section 5 of this Chapter; or
- vii. To otherwise fail or refuse to comply with any provision of this Chapter.

02-06-09 Prevention of unfair labor practices.

- A. If any employer or labor organization is charged by any person with having engaged in or is engaging in an unfair labor practice, the Governor shall investigate the charge and, for cause shown, may issue and cause to be served upon the employer or labor organization a funding of probably unfair labor practice. In any case in which the Governor does not issues a finding of probable unfair labor practice because the charge fails to state an unfair labor practice, the Governor shall provide the person making the charge a written statement of the reasons for not issuing a finding of probably unfair labor practice. No finding of probably unfair labor practice shall be issue on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Governor.
- B. Any finding of probably unfair labor practice issued by the Governor under subsection (A) of this Section shall contain a notice –
 - i. Of the charge;
 - ii. That a hearing will be held before the Governor; and
 - iii. Of the time and place fixed for the herein.

- C. The employer or labor organization involved shall have the right to file an answer to the finding of probable unfair labor practice within the time fixed by the Governor and any amending finding of probable unfair labor practice, appear in person or otherwise, and give testimony at the time and place fixed in the finding of probable unfair labor practice for the hearing. Not further briefing or filing shall be permitted without leave granted by the Governor in his discretion.
- D. After such a hearing, the Governor in its discretion may upon notice receive further evidence or hearing argument.
- E. If the Governor determines after any hearing on a finding of probably unfair labor practice that the preponderance of the evidence received demonstrates that the employer or labor organization named in the finding of probably unfair labor practice has engaged in or is engaging in an unfair labor practice, then the Governor shall state in writing its findings and shall issue and cause to be served on the employer or labor organization an order as applicable –
 - i. To cease and desist from any such unfair labor practice in which the employer or labor organization is engaged;
 - ii. Requiring the parties to negotiate or renegotiate a collective bargaining agreement in accordance with the order of the Governor;
 - iii. Requiring reinstatement of an employee with backpay;
 - iv. Revoking a labor organization’s license issue under Section 10 of this Chapter; or
 - v. Including any combination of the actions described in paragraphs (1) through (4) of this subsection (E).
- F. If the Governor determines that the preponderance of the evidence received fails to demonstrate that the employer or labor organization names in the finding of probably unfair labor practice has engaged in or is engaging in an unfair labor practice, the Governor shall state in writing his findings and shall issue an order dismissing the finding of probable unfair labor practice.
- G. Any final order of the Governor may be appealed to the Pueblo of Isleta Tribal Court. The appeal shall be taking by filing a written notice of appeal with the Tribal Court and the Governor within ten (10) calendar days after the date of entry of the final order by the Governor. The Tribal Court shall affirm a final order of the Governor upon appeal unless such order is not supported by substantial evidence or is arbitrary and capricious. The decision by the Tribal Court shall be final.

02-06-10 Licensing and registration of labor organizations.

- A. No labor organization shall engage in business, organizing employees, or any other labor organization activities on Pueblo lands without a license issued by the applicable Pueblo entity, which license shall provide as follows:
- i. The right of such labor organization to conduct business and labor organization activities on Pueblo lands is a privilege, subject to the Pueblo’s jurisdiction, consent, regulatory authority, and right to exclude;
 - ii. The consent of the Pueblo to allow such labor organization to conduct business and labor organization activities on Pueblo lands is conditioned upon such labor organization’s express agreement to be subject to Pueblo law, including, without limitation, this Chapter;
 - iii. In consideration of the Pueblo’s consent to such labor organization’s conduct of business and labor organization activities within the jurisdiction of the Pueblo, such labor organization agrees to:
 1. Comply with Pueblo law including, but not limited to, this Chapter and all policies and procedures of an employer;
 2. Submit to the exclusive jurisdiction of the Pueblo, including, without limitation, the jurisdiction of the Governor and the Pueblo of Isleta Tribal Court, for any dispute arising out of such labor organization’s conduct of business and labor organization activities on Pueblo lands; and
 3. To pay an annual license fee to the Pueblo in the amount of \$10,000.00.
 - iv. Such other requirements as the Pueblo may require.
- B. For the purpose of licensing under this Section 10, “applicable Pueblo entity” means –
- i. The Pueblo of Isleta Gaming Regulatory Agency for licensing regarding the Pueblo’s gaming businesses or operations; or
 - ii. The Pueblo’s Treasurer for all other licensing.

02-06-11 Bargaining impasses.

- A. Not less than thirty (30) days after the commencement of negotiations for a collective bargaining agreement, if management and the exclusive bargaining representative reach a bargaining impasse over matters of disagreement, the parties shall submit such impasse to third-party mediation to resolve the matters of disagreement informally through a mediator selected by the parties. No party shall declare a bargaining impasse under this Section under thirty (30) days after the commencement of mediation.

- B. Not less than thirty (30) days after the commencement of mediation regarding a bargaining impasse under subsection (A) of this Section, and if the parties have failed to resolve matters of disagreement through such mediation, either party may declare a bargaining impasse by providing written notification to the Governor of a bargaining impasse. Written notification must include –
- i. A summary statement of the matters of disagreement and agreement;
 - ii. A proposed collective bargaining agreement which includes the matters of agreement;
 - iii. Each party’s proposal of the language of any matters of disagreement to be included as terms of a collective bargaining agreement between the parties; and
 - iv. The respective positions of the parties.
- C. Within ten (10) days of receipt of a written notification of a bargaining impasse, the Governor shall promptly investigate an impasse presented to it under subsection (B) of this Section and shall either –
- i. Recommend to the parties procedures for the resolution of the bargaining impasse; or
 - ii. Assist the parties in resolving the bargaining impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish resolution of the bargaining impasse.
- D. If the parties do not arrive at a settlement within twenty (20) days after assistance by the Governor under subsection (C) of this Section, the Governor shall hold a hearing for the purpose of rendering a binding decision to resolve any matters of disagreement, which shall be resolved solely by the Governor deciding to include either party’s proposal submitted under paragraph 3 of subsection (B) of this Section as terms in a collective bargaining agreement between the parties. In preparation for such hearing, the Governor may receive a brief from each party, administer oaths, take the testimony of any person under oath, and issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence at such hearing. The Governor shall thereafter issue a binding decision to resolve any matters of disagreement, which shall be resolved solely by the Board deciding to include either party’s proposal submitted under paragraph 3 of subsection (B) of this Section as terms in a collective bargaining agreement between the parties. Such decision shall include a written report issued to the parties summarizing the resolution of each area of impasse, supported by a statement of reasoning. The decision shall be binding on the parties during the term of the collective bargaining agreement, unless the parties agree otherwise.

02-06-12 Certification of exclusive bargaining representative.

- A. A labor organization seeking certification as the exclusive bargaining representative of a bargaining unit of employees shall submit a petition for certification to the Governor. The petition shall be signed by current employees in the bargaining unit. A labor organization seeking certification shall also submit to the Governor, at the time the petition is submitted, a roster of its officers and representatives, a copy of its constitution and bylaws, proof of a current license issued to the labor organization under Section 10 of this Ordinance, and a statement of its objectives.

- B. Upon receiving a petition for certification, the Governor shall determine the appropriateness of the bargaining unit within thirty (30) days of the filing of the petition.
 - i. The Governor shall determine any unit to be an appropriate bargaining unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operation of the employer involved; provided, however, that a unit shall not be determined to be appropriate if it includes –
 - 1. Any management official or supervisor;
 - 2. Any employee engaged in administering the provisions of this Chapter;
 - 3. Both professional employees and other employees, unless a majority of the professional employees votes for inclusion in the unit;
 - 4. Any employee engaged in surveillance and security systems or any other internal control system designed to protect the integrity of the Pueblo’s gaming operations; or
 - 5. Any individual excluded from the definition of employee under paragraph 2 of Subsection (A) of Section 2.

- C. If the bargaining unit identified in the petition for certification is appropriate, the Board shall ascertain the number of employees in the bargaining unit at the time the petition was made and shall determine the number of employees who have selected the labor organization as their exclusive bargaining representative at the time of the petition.
 - i. If the Governor determines that based on the petition for certification, more than 50% of the employees in the bargaining unit have selected the labor organization as their exclusive bargaining representative at the time the petition was filed, the Governor shall certify the labor organization as the exclusive bargaining representative of the employees without an election.
 - ii. If the Governor determines that, based on the petition for certification, less than 35% of the employees in the bargaining unit have select the labor organization as their exclusive bargaining representative at the time the petition was filed, the

Governor shall not certify the labor organization as the exclusive bargaining representative of the employees without an election.

- iii. If the Governor determines that, based on the petition for certification, not less than 35% and not more than 50% of the employees in the bargaining unit have select the labor organization as their exclusive bargaining representative at the time the petition is filed, the Governor shall conduct a secret ballot election among the employees in the bargaining unit not later than forty-five (45) days following the filing of the petition. Notice of the election shall be posted at the employer's facility.
 1. The Governor shall determine who is eligible to vote in any election under this Section and shall establish rules governing any such election, which shall include a ballot allowing employees eligible to vote the opportunity to choose:
 - a. from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or
 - b. not to be represented by a labor organization.
 2. Other labor organizations submitting petitions to the Governor with the signatures of more than 20% of the employees in the bargaining unit shall also be included on the ballot.
 3. A labor organization which has submitted to the Governor a valid copy of a current or recently expired collective bargaining agreement for the unit may intervene with respect to a petition filed pursuant to subsection (A) of this Section and shall be placed on the ballot of any election under this Section with respect to such petition.
 4. The labor organization(s) on the ballot shall be supplied with a complete list of current employees in the proposed bargaining unit within a reasonable time prior to the representation vote. In elections where only one labor organization is listed on the ballot, the Governor shall certify the labor organization as the exclusive bargaining representative of the employees only if more than 50% of the employees vote in favor of representation by the labor organization. Where more than one labor organization is included on the ballot and no choice receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives more than 50% of the votes cast in a runoff election shall be certified by the Governor as the exclusive bargaining representative.
- D. Certification shall not be accorded to a labor organization –

- i. If the Board determines that the labor organization is opposed to Pueblo law or subject to corrupt influences;
 - ii. In the case of a petition submitted pursuant to Subsection (A) of this Section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive certification;
 - iii. If there is then in effect a lawful written collective bargaining agreement between the employer involved and an exclusive bargaining representative, other than the labor organization seeking certification, covering any employees included in the unit specified in the petition, unless –
 - 1. The collective bargaining agreement has been effect for more than 3 years; or
 - 2. The petition for certification is filed not more than 105 days and not less than 60 days before the expiration dates o the collective bargaining agreement; or
 - iv. If the Governor has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this Section and in such election a majority of the employees voting either chose a labor organization for the certification as the unity’ exclusive bargaining representative or chose not to be represented by a labor organization.
- E. A labor organization certified pursuant to this Section 12 for an appropriate bargaining unit shall be the exclusive bargaining representative of all the employees in such unity for the purposes of collective bargaining with respect to the conditions of employment. An exclusive bargain representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

02-06-13 Decertification.

- A. Upon the filing with the Governor of a petition signed by 35% of more of the employees in a bargaining unit seeking decertification of a certified exclusive bargaining representative, the Governor shall conduct a secret ballot election to determine whether the certified exclusive bargaining representative continues to enjoy the support of a majority of employees participating in an election. Upon such election, if more than 50% of the employees participating in an election vote to decertify a certified exclusive bargaining representative, such bargaining representative shall be decertified and shall thereafter cease to be legally entitled and obligated to represent employees in the unit.
- B. A petition for decertification of a certified bargaining representative shall not be considered timely –

- i. During the first twelve (12) months following the certification of the exclusive representative; or
- ii. When there is a collective bargaining agreement, except that request for a decertification may be made no earlier than 180 days and no later than 30 days prior to the end of the agreement; provided, however, that a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement.

02-06-14 Rules and regulations.

The Governor shall promulgate rules and regulations solely for matters within its jurisdiction, subject to approval by Tribal Council, necessary for the enforcement and implementation of the provisions of this Chapter.

02-06-15 Severability.

The provisions of this Chapter are severable. If any provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application to other persons or circumstances shall not be affected thereby.

02-06-16 Sovereign Immunity.

Except as expressly provided in this Chapter for the sole purpose of process before the Governor, the Pueblo of Isleta reserves its sovereign immunity, and that of its agencies, entities, and businesses, from legal process and unconsented suit to the fullest extent permitted by law.

**02-07
RESERVED – EMPLOYEE GRIEVANCE**

**TITLE 3
ELECTIONS
03-01
GENERAL PROVISIONS**

03-01-01. Short Title

This Chapter shall be known as and may be cited as the “Elections Code” of the Pueblo of Isleta.

03-01-02. Definitions

A. The following definitions shall apply to this Chapter:

i. “At-Large Member” of the Election Board means any of the Tribal Member appointees who are not serving as Pueblo of Isleta employee representatives of either the Treasurer’s Office or the Census Department and who are not serving as the Secretary of Tribal Council.

ii. “Ballot” means an official form showing the names of the offices to be filled at the nomination or election and the names of the candidates for consideration.

iii. “Certify” means the process of the Tribal Council Secretary attesting that an action has been taken in compliance with the Pueblo of Isleta Constitution and this Code. Tribal Council need not approve a certification by the Secretary prior to its issuance.

iv. “Day” means calendar day unless otherwise indicated. To calculate days for purposes of this Code: exclude the day of the event that triggers the period; count every day including intermediate Saturdays, Sundays, and legal holidays thereafter; and include the last day of the period.

v. “Incumbent Tribal Council” means the persons holding or acting in the position that is up for election, regardless of whether they are seeking re-election.

vi. “Polling” shall mean the procedure to nominate candidates and to vote in any general, special, or recall election.

03-01-03. General Applicability

A. This Code shall only apply to Tribal elections.

B. Unless explicitly stated otherwise, each provision of this Code shall be generally construed to apply to the following Pueblo of Isleta elections events: general election nominations, special election nominations, general elections, special elections, and recall elections.

03-01-04. Notice Requirements

A. Posting Locations. All notices required by this Code shall be posted in at least 15 public locations within the Pueblo.

B. Format. The format and size of notices shall be at the discretion of the Secretary, under the advisement of the Elections Board.

C. Mailed Notice. Mailed notice shall only be required for notices of polling dates, locations, and elections results, and only to heads of household aged fifty-five years or older and any heads of household living outside of the Pueblo who do not have an email address on file with the Census Department.

D. Electronic Notice. Notice of polling dates, locations, and elections results shall be provided to Tribal Members electronically by email and text message to the phone number and email address

on record with the Census Department. Electronic notice shall also be posted to the Pueblo of Isleta website.

E. Deadlines to Post.

- i. Notice of a declaration of vacancy requiring a special election shall be posted the day following the Council's declaration.
- ii. Notice of the dates and locations of polling related to any general or special election shall be posted at least fifteen days prior to the voter registration and nomination event. This notice shall include the dates and locations of each of the registration/nomination event and the election event.
- iii. Notice of the list of candidates eligible for nomination in any general or special election shall be posted no less than five days prior to the registration/nomination event.
- iv. Notice of the list of nominated candidates for any general or special election shall be posted by the day after the registration/nomination event; except that for special elections, if the registration and nomination event is held exactly ten days prior to the election date, then notice of nominated candidates must be posted immediately after the polls close. In no instance should notice of nominated candidates be posted fewer than ten days prior to the election day. The notice of nominated candidates shall include the dates and location of the election event, even if the same has already been included in prior notices.
- v. For any recall election, notice of the dates and locations of polling and the elected official subject to removal shall be posted no less than ten days preceding the date of the election.
- vi. Notice of elections results shall be posted the day after the election event.
- vii. If election results change due to a recount, notice of the revised results shall be posted the day after the recount is completed.

03-01-05. Ballot Requirements

A. Approved Form. The Tribal Council shall generally establish the form of ballots. Upon Tribal Council's determination of such form, the Secretary is authorized to certify ballots for each polling event.

B. Voting Machine Compatibility. If an electronic voting system is used, ballots shall be in a form compatible with the voting machine certified by the Secretary.

C. Listing of Candidates. The names of candidates for each Office being voted on shall be listed in alphabetical order by candidate first name. The Secretary shall determine how the exact name of each candidate shall appear on the ballot.

D. Quantity. Ballots shall be generated by the Secretary in sufficient quantity to assure that each voter whose name appears in the List of Registered Voters may receive a ballot and to address any ballot errors.

E. Paper Ballot. In elections in which an electronic voting system is used, voters may opt to use a paper ballot that shall be hand counted in lieu of placement into the voting machine. A maximum of fifty paper ballots will be accepted under this subsection per candidate nomination and election, unless the Secretary determines to allow additional paper ballots.

F. Write-In Ballot. A write-in ballot shall be declared invalid and not counted.

03-01-06. Electronic Voting System

A. The Secretary, under the advisement of the Elections Board, may determine to use an electronic voting and tabulation system for any election. If the Secretary does so, the Secretary must certify that the voting machine has been tested and approved by a U.S. Election Assistance Commission accredited laboratory.

B. If a voting machine becomes inoperable during a nomination or election event, an alternative voting machine may be used instead. Where no functional voting machine is available, votes shall be cast by handwriting on the ballot and submitted to poll clerks for entry into the voting machine's locked box. All such ballots shall be hand-counted at the close of the election event.

03-01-07. Leave Provided to Vote

All employers within the exterior boundaries of the Pueblo of Isleta, including any private businesses, the Pueblo of Isleta, the Isleta Resort & Casino, the Isleta Pueblo Housing Authority, and the Isleta Health Center, shall provide employees who are enrolled Tribal Members with two hours of leave on the day of the Pueblo's voter registration/candidate nomination event and on the day of any Pueblo of Isleta election.

03-01-08. Banished Tribal Members

A. Tribal Members who have been banished by the Pueblo of Isleta shall only be permitted to register and vote in-person if accompanied by Pueblo law enforcement. The banished Tribal Member's time within the Pueblo of Isleta under this section shall be limited to the time actually required to register and vote, and their location shall be limited to the polling site and their travel to and from that site.

B. It is the responsibility of the banished Tribal Member to make the request to be accompanied by the Isleta Police Department as required under this section.

C. The Isleta Police Department shall be obligated to accompany the banished Tribal Member as requested under this section any request.

03-02

ELECTIONS OFFICER AND ELECTIONS BOARD

03-02-01. Tribal Council Secretary as Chief Elections Officer; Powers and Duties

A. Powers. The Secretary shall serve as Chair of the Elections Board. The Secretary shall have supervisory authority over all elections.

B. Duties. The Secretary shall have the following duties, which shall be performed under advisement of the Elections Board:

- i. Certify and maintain the Election Procedures Manual for administration of this Code.
- ii. Approve all forms and notice templates generated by the Elections Board.
- iii. Delegate elections tasks to the Elections Board.
- iv. Certify candidate eligibility determinations of the Tribal Council and candidate withdrawals.
- v. Certify an electronic voting system prior to its use in any election.
- vi. Certify voter registration results, candidate nomination results, and elections results.
- vii. Certify recall petitions.
- viii. Perform any additional duties as directed under the Constitution or Elections Code.

03-02-02. Elections Board; Purpose

A. Advisory Body. The Elections Board shall serve as an advisory body to the Secretary. As an advisory body, bylaws shall not be required.

B. Secretary retains Sole Authority. The Secretary shall retain sole supervisory and decision-making authority over the Elections Board pursuant to the Secretary's constitutional authority over elections.

03-02-03. Elections Board; Membership Criteria; Term

- A. Board Membership. The Elections Board membership shall consist of seven members total:
- i. Tribal Council Secretary, as Elections Board Chair;

- ii. One employee from the Census Department, designated by the Department Director;
- iii. One employee from the Treasurer's Office, designated by the Treasurer;
- iv. Four at-large positions shall be appointed by Tribal Council and filled by Tribal Members, except that one of the at-large positions shall be reserved for a young person between the ages of 18 and 25 years old.

B. Term. Except for the Secretary and the youth at-large position, each board member shall serve until they either withdraw, separate from their employment with the Pueblo if they serve as either the Census Department or Treasurer designee, or are removed from the Board by Tribal Council. The Secretary's term on the Elections Board shall be limited to the Secretary's term in office. The youth at-large position shall be vacated once the appointee reaches the age of 26. Should Tribal Council remove multiple members at one time, the body should strive to retain at least three board members that have served for at least one election cycle.

03-02-04. Elections Board; Powers and Duties; Meetings

A. Powers. The Elections Board is an advisory body without power over the Secretary, except that the Elections Board shall have the authority to seek relief from Tribal Council for any action by the Secretary which the Elections Board deems unlawful, as set out in Sections 03-10-01(B) and 03-10-02(H).

B. Duties. In addition to the duties assigned to the Board for each quarterly meeting described in Section 03-02-04(D), the Board shall:

- i. Review the Elections Procedures Manual with the incoming Secretary within thirty days of the beginning of the Secretary's term.
- ii. Develop forms and notice templates for approval by the Secretary, which include, but are not limited to the following:
 - 1. Certification of Electronic Voting System.
 - 2. Notice of Vacancy Requiring Special Election.
 - 3. Declaration of Candidacy Form.
 - 4. Candidate Withdrawal Form.
 - 5. Notice of Tribal Council Determination as to Candidate Eligibility - Certified.
 - 6. Notice of Special Election Voter Registration and Candidate Nomination Date and Polling Place; Election Date and Polling Place.
 - 7. Notice of General Election Voter Registration and Candidate Nomination Date and Polling Place; Election Date and Polling Place.

8. Notice of Special Election Re-Registration and Candidate Nomination Results – Certified.
 9. Notice of General Election Voter Registration and Candidate Nomination Results – Certified.
 10. Notice of Special Election Results – Certified.
 11. Notice of General Election Results – Certified.
 12. Notice of Recall Election Results – Certified.
 13. Notice of Election Results after Recount - Certified
 14. Notice of Disorderly Conduct at Polling Site.
 15. Forms to file a Challenge.
 16. Forms to Appeal a Decision on a Challenge.
- iii. Recommend the format and sizing of notices for public posting.
 - iv. Consult with the following Pueblo officials and departments:
 1. Governor: to coordinate use of facilities for elections purposes.
 2. Surveying & Mapping Department: to identify locations within the community to post notices.
 3. Treasurer or designee: to complete procurement and acquisition tasks; to develop the annual budget; and to coordinate use of equipment, such as printers, scanners, and letter-folding machines.
 - v. Serve as poll clerks at all elections events, including voter registration, candidate nomination, and elections.
 - vi. Verify eligibility of voters at registration and at elections.
 - vii. Witness and sign electronic voting machine results.
 - viii. In the event that paper ballots are requested under Section 03-01-05(E), witness hand counting of paper ballots.
 - ix. In the event that a valid recount request is made under Section 03-10-02(D), participate in hand counting of all ballots.
 - x. Hear appeals of the Secretary’s decision in challenges concerning Errors and Omissions, in accordance with Section 03-10-02(F)
 - xi. Hear challenges concerning Fraud or Corruption by Officials or Fraud or Corruption by Voter, in accordance with Section 03-10-02(G).
 - xii. Appoint one member to monitor voting access issues impacting Pueblo of Isleta Tribal Members’ participation in elections in other jurisdictions. This appointee shall hold the title of Elections Access Liaison, who shall:

1. Attend and participate in state Native American Elections Task Force meetings.
 2. Consult with the Pueblo of Isleta Governor on polling locations within the Pueblo of Isleta, and submitting timely written requests to the state and counties for polling locations, monitored secured containers, language assistance, and similar requests.
 3. Consult with the Pueblos of Isleta Governor on any bills presented in state legislative sessions that restrict voting access.
 4. Collaborate with voting organizations as appropriate to expand voting access for Tribal Members.
 5. Provide an annual report to the Tribal Council and Governor detailing any access issues impacting Tribal Members' right to vote.
 6. Attend and submit comment to State elections redistricting committees.
- xiii. Staff any other tasks as directed by the Secretary, including but not limited to: verifying voter eligibility, preparing and posting notices, and preparing for voter registration and for polling events.
- xiv. Perform any additional duties as directed by the Elections Code or the Secretary.

C. Duties; Limitations.

- i. Except for elections events which shall be staffed by all board members, the Pueblo of Isleta employees who serve on the Board shall not be delegated Board tasks to work on during their ordinary business hours. The Board's administrative tasks should instead be delegated to the at-large members.
- ii. The Pueblo of Isleta employees who serve on the Board shall not be appointed to serve as the Liaison described in Section 03-02-04(B)(xii).
- iii. Except in extraordinary circumstances, Elections Board meetings shall be held outside of ordinary business hours.

D. Meetings. The Board shall meet at least quarterly, with more frequent meetings as determined necessary by the Secretary or to hear a challenge. Meetings of the Board shall be capped at four hours per day. At the discretion of the Secretary, meetings may last multiple days if necessary to complete all requisite tasks.

E. Each year, by the end of the first quarter, the Board shall meet to:

- i. Review and, if necessary, revise all forms and notice templates.
- ii. Review and, if necessary, recommend that revisions to the Elections Procedure Manual. Such revisions shall take effect upon their adoption by the Secretary.

iii. Identify a Board Member to serve as an Elections Access Liaison, in compliance with Section 03-02-04(B)(xii).

iv. Issue a recommendation to the Secretary as to whether to use an electronic voting system and, if so, identify vendors that would be eligible under the criteria of Section 03-01-06.

v. Prepare a form ballot template for submission by the Secretary to Tribal Council for approval.

vi. Any other actions deemed necessary by the Secretary.

vii. The quarterly deadline for these tasks may be extended as deemed necessary by the Secretary.

F. Each year, by the end of the second quarter, the Board shall meet with the Governor or his designee and the Treasurer or her designee, to:

i. Complete procurement and contracting for any necessary vendors, including for voting machines if feasible, and for stamps/postage for bulk mailing. The Elections Board shall ensure that all necessary contracts are in effect for the remainder of the fiscal year, even if no general election will take place that year.

ii. Determine the equipment that the Board will require throughout the year, including printers, scanners, and letter-folding machines, and determine whether equipment-sharing with the Treasurer is appropriate or if the budget should include equipment costs for the Board;

iii. Identify appropriate facilities for polling places, to apply to any elections through the third quarter of the subsequent year;

iv. Any other actions deemed necessary and appropriate by the Secretary.

v. The quarterly deadline for these tasks may be extended as deemed necessary by the Secretary.

G. Each year, by the end of the third quarter unless an earlier deadline is specified, the Board shall meet to:

i. By August 31, 2024, in consultation with the Treasurer or her designee, create a budget for the subsequent year. The Treasurer's Office shall submit such budget to the Tribal Council during their annual budget session. Budget requests shall be in the form required by the Treasurer and shall include estimates for Board Member stipends, overtime compensation, administrative costs, and any other additional costs necessary to carry out the duties of the Elections Board.

- ii. Determine whether additional poll clerks, aside from the Elections Board Members, are necessary at upcoming elections events;
- iii. Identify whether early voting shall be permitted and, if so, the applicable procedure to apply to any elections through the third quarter of the subsequent year.
- iv. In consultation with the Surveying and Mapping department, determine posting locations throughout the Pueblo for purposes of public notice.
- v. Any other actions deemed necessary by the Secretary.
- vi. The quarterly deadline for these tasks may be extended as deemed necessary by the Secretary.

H. Each year, by the end of the fourth quarter, the Board shall meet to:

- i. Provide a report to the Tribal Council regarding any elections carried out during the year, including a report on how the election was administered and a summary of challenges and their outcomes.
- ii. Review the Elections Code and determine whether revisions are advisable, in which case such revisions shall be presented to the Tribal Council by the Secretary.
- iii. Recommend whether Constitutional amendments relating to elections access are advisable, in which case such amendments shall be presented to the Tribal Council by the Secretary.
- iv. Provide a report to the Tribal Council and Governor on any voting access issues impeding Tribal Member participation in the elections of other jurisdictions.
- v. Any other actions deemed necessary by the Secretary.
- vi. The quarterly deadline for these tasks may be extended as deemed necessary by the Secretary.

03-02-05. Elections Board; Compensation

A. Compensation. Each Board Member shall be compensated at the rate established by the Tribal Council, except for Board Members who are also Pueblo of Isleta employees, who shall be paid either overtime rates or the Board Member compensation rate, whichever is higher, for any hours worked for elections purposes in excess of their ordinary work schedules.

- i. Board members shall be compensated at an hourly rate for participation in quarterly and special meetings, for meetings to hear challenges, and for tasks assigned by the Secretary to prepare for elections or distribute elections results.

ii. Board members shall be compensated a daily rate for election events, such as polling events, voter registrations, candidate nominations, election day, and any necessary recounts. This rate shall not be less than the hourly rate multiplied by the total number of hours worked each day.

iii. In addition to the compensation authorized herein, Pueblo of Isleta employees serving on the Elections Board shall also be provided with five days of annual leave after elections are complete.

B. During election events, Board Members shall not be limited to the four-hour cap applicable to meetings. Instead, Board Members shall complete duties as assigned by this Code and by the Secretary each day until the elections event is completed, regardless of the number of hours it takes to do so.

03-02-06. Elections Board; Vacancy

A. Vacancy. In the event of a vacancy of one of the at-large Board Members, the Secretary shall communicate such vacancy to Tribal Council. The vacancy shall be filled by Tribal Council appointment. In the event of the vacancy of the Census Department representative, the Census Department Director shall fill the vacancy, unless the Director position is also vacant, in which case the Governor shall appoint an interim replacement. In the event of the vacancy of the Treasurer's Office representative, the Treasurer shall fill the vacancy, unless the Treasurer position is also vacant, in which case the Tribal Council shall appoint an interim replacement.

B. Emergency Filling of Vacancy. Where a vacancy impedes the Elections Board's ability to carry out registration, candidate nominations, or elections, the Secretary may temporarily fill such vacancy on an emergency basis, regardless of whether such vacancy is of an at-large member position or of the Census Department Director or of the Treasurer's Office representative. The Secretary may request approval from the Governor to call upon Pueblo of Isleta employees to assist with Elections Board duties and to effectively fill the vacancy until an official appointment by Tribal Council.

**03-03
CANDIDATES**

03-03-01. Declaration of Candidacy

A. Candidate declarations shall be due by noon ten days prior to the voter registration and candidate nomination event.

B. Candidate declarations shall be on the form required by the Secretary and shall include all necessary disclosures, as described in Section 03-03-03.

03-03-02. Candidate Drug Testing – Voluntary Disclosure Repealed

Drug testing shall neither be required nor offered by the Pueblo of Isleta for any candidates running for elected Office.

03-03-03. Mandated Candidate Disclosure - Conflict of Interest

A. At the time a candidate registers their candidacy, they shall file a statement that they will not have any conflicts of interest if elected. The candidate shall also disclose any potential existing conflicts of interest as well as the actions the candidate will take, if elected, to ensure that an actual conflict will not arise.

B. For purposes of this section, a conflict of interest means that a candidate, if elected, would likely obtain a personal or economic benefit from their official position that would not otherwise apply to other elected officials or to the general public.

C. Serving as an attorney or spokesperson before the Isleta Tribal Court or any Isleta Tribal Administrative Tribunal shall be considered a conflict of interest *per se* for any elected and/or appointed official and shall be strictly prohibited. Any elected official in violation of this provision shall be eligible for removal for malfeasance in office and/or gross neglect of duty.

03-03-04. Leave Not Required for Pueblo Employees Running for Office

A. This section applies to employees of the Pueblo of Isleta, the Isleta Resort & Casino, the Isleta Health Center, and the Isleta Public Housing Authority. In this section the term “employee” refers only to employees of these Pueblo entities.

B. Any eligible employee may declare their candidacy for an elected office of the Pueblo of Isleta. The employee shall not be required to take leave during their period of candidacy, unless federal regulations applicable to the position require that such leave be taken.

C. No employee shall be penalized for running for an elected office within the Pueblo. The Pueblo employer shall not reduce the employee’s pay, suspend the employee, terminate the employee, alter the employee’s duties, or otherwise retaliate against an employee for exercising their right to be a candidate for an elected office within the Pueblo. Notwithstanding this provision:

i. Employees are prohibited from campaigning for any candidate, including themselves, during business hours.

ii. Employees are prohibited from using their position of employment for any personal gain, including personal gain relating to their bid for candidacy.

iii. The Pueblo employer may discipline, up to and including through termination, any employee who violates either (C)(i) or (C)(ii) of this subsection.

D. If the employee is not successful in their bid for candidacy, they may resume their position of employment without penalty.

E. Upon conclusion of the election, if the employee is successful in their bid for candidacy or is designated by the electee(s) to serve in an appointed position, the employee shall be provided with the opportunity to resign. The employee shall not be terminated unless they first decline the opportunity to resign. The employee's position shall not be held open for them while they hold their elected or appointed office.

F. Nothing herein shall limit or amend the at-will employment policies of any Pueblo of Isleta entity.

03-03-05. Candidate Eligibility

A. Governor. An enrolled member of the Pueblo of Isleta shall be eligible for election as Governor if:

- i. They have lived on the lands of the Pueblo continuously for five years immediately preceding their candidacy for office; and
- ii. They have never been convicted of a felony; and
- iii. They are at least thirty-five years of age at the time of their election.

B. Tribal Council Member. An enrolled member of the Pueblo of Isleta shall be eligible for election as Council Member if:

- i. They have lived on the lands of the Pueblo continuously for five years immediately preceding their election, provided that this residency requirements shall not apply to persons otherwise eligible whose absence resulted from military service or attendance at an institution of learning; and
- ii. They are at least twenty-five years of age at the time of their election.

C. Eligibility; One Position. No person shall run for both Governor and Tribal Council positions during the same election.

D. Eligibility; Term Limit. Pursuant to the Constitution Title IV, Section 9 and Title V, Section 3, no persons that have served two consecutive full terms shall be eligible to run as a candidate for either Governor or Tribal Council until they have been out of office at least one full term. However, the first term of any person elected after a special election shall not count for purposes of the term limit, as such person will have only served a partial term.

E. Eligibility; Determination of Place of Residency for Candidate. Tribal Council has the discretion to consider a number of factors to determine a person's place of continuous residency for the purposes of determining candidate eligibility. Factors to consider may include, but shall not be limited to, the following:

- i. The address listed on official documents.

- ii. The address listed on Pueblo of Isleta census records.
- iii. The address provided for Pueblo of Isleta distributions.
- iv. An application for lease on Pueblo of Isleta land.
- v. The person's physical presence within the Pueblo.
- vi. The person's participation in community events and traditional activities, provided that a person's failure to participate in traditional activities shall not be considered grounds for disqualification of residency.
- vii. Periods outside of the Pueblo that have been temporary or transient in nature, such as vacations, daily work, or seasonal work, should not be considered grounds for disqualification of residency.
- viii. Whether the person has been assigned land within the Pueblo and, if so, whether the person routinely maintains the site, whether the person has added permanent improvements (including utility connections) to the site, whether the person maintains personal possessions at the site, whether the person receives mail at the site, and/or whether addressing has been added to the site.

F. Eligibility; Determination of Tribal Council. No later than the day following the candidate declaration due date under Section 03-03-01(A), the Tribal Council shall meet to determine the eligibility of each candidate based on the forgoing requirements. The Secretary shall certify the determination of the Tribal Council and shall post notice of the same at least five days prior to the voter registration and candidate nomination event.

G. Ineligible Candidates; Notice and Opportunity for Hearing. Candidates deemed ineligible by Tribal Council shall be provided with written notice of the Council's decision and an opportunity to be heard in the next regular Tribal Council meeting, unless Tribal Council determines that an earlier special meeting is required. The candidate may bring witnesses and any documentary evidence to demonstrate their eligibility. The Tribal Council shall determine through public vote during the Tribal Council meeting whether the candidate is eligible. In the event the Tribal Council determines a candidate originally deemed ineligible is in fact eligible, the Secretary shall issue an updated notice as soon as is reasonably feasible, but no later than the day prior to the voter registration and candidate nomination event. Tribal Council shall also provide written notice of its decision to the candidate within fourteen days of the hearing.

03-03-06. Candidate Withdrawal or Death

- A. Any candidate may voluntarily withdraw their Declaration of Candidacy at any time.
- B. To withdraw, a candidate shall complete the Candidate Withdrawal Form, which shall be certified as accepted by the Secretary upon the Secretary's receipt. The Secretary shall

immediately inform the Election Board of the withdrawal. The Secretary shall inform Tribal Council of the withdrawal at the next regularly scheduled Tribal Council meeting.

C. Upon a candidate's withdrawal, the Secretary, with the administrative assistance of the Elections Board, shall issue updated notices and ballots if there is sufficient time prior to the subsequent nomination or election date to do so. If there is insufficient time to issue revised notices and ballots, notice of the withdrawal will be posted at the election site and any votes for the withdrawn candidate will be null and void.

D. Upon a candidate's death, the Secretary, with the administrative assistance of the Elections Board, shall issue updated notices and ballots if there is sufficient time prior to the subsequent nomination or election date to do so. If there is insufficient time to issue revised notices and ballots, notice of the death will be posted at the election site and any votes for the deceased candidate will be null and void.

03-04 EARLY VOTING

03-04-01. Early Voting

A. Under the advisement of the Elections Board, the Secretary may conduct early voting for any election.

B. Early voting shall only be permitted for voters that registered in-person during the applicable voter registration and candidate nomination event.

i. For special elections, only voters that registered in the preceding general election and in the special election's re-registration event shall be eligible to participate in early voting.

ii. For recall elections, only voters that registered in the preceding general election shall be eligible to participate in early voting.

C. If early voting is permitted for an election, it shall begin no earlier than ten days prior to the election day and shall end no later than the day before the election date. Dates, locations, and hours of early voting shall be at the discretion of the Secretary, under the advisement of the Elections Board.

D. The Census Department representative of the Elections Board shall staff the early voting station in order to verify voter eligibility and to record the submission of an early voting ballot.

E. Ballots cast under early voting shall be placed in a locked box monitored by the Census Department representative during voting hours. The ballot box shall be secured within the Isleta Police Department outside of voting hours.

F. Any person who has voted by early ballot shall not be permitted to vote in person on the election day for which they have cast an early ballot. In the event that multiple ballots are submitted by the same voter, all of that voter's ballots shall be invalid.

03-05

POLLING PLACES - CONDUCT, SUPERVISION, AND ACCESSIBILITY

03-05-01. Hours of Operation

Polling places for all nominations and elections shall be open between the hours of 8:00 a.m. and 7:00 p.m. All voters present at the polling place and in line to vote at 7:00 p.m. shall be permitted to vote.

03-05-02. Maintenance of Order

A. The Elections Board shall act as poll clerks during all nomination and elections events.

B. Poll clerks shall maintain order and provide instruction to voters.

C. Poll clerks shall enter each voter in the poll books and shall issue ballots.

D. The Secretary shall have supervisory authority over the poll clerks in maintaining order and instructing voters, except that this supervisory authority shall not extend to any disciplinary or other personnel actions against the Pueblo of Isleta employees appointed to the Board. Such Constitutional duty to manage Pueblo of Isleta personnel shall be retained by the Governor

E. The Secretary shall resolve any challenges brought to their attention during voting hours relating to voting machine errors or dysfunction, procedures instituted by the poll clerks, signage at the election site, and forms used by the poll clerks, pursuant to Section 03-10-02(F).

F. The Tribal Sheriff need not be present at a polling place, unless the Governor determines that the Sheriff's presence is necessary to maintain public safety. In such an event, the Sheriff shall be neutral, discrete, and foster a welcoming environment.

G. An Isleta Police Department Officer shall be present at each polling place during voting hours in order to ensure public safety and to remove and/or arrest any person who threatens public safety or otherwise violates the criminal laws of the Pueblo of Isleta. The Isleta Police Department Officer shall be neutral, discrete, and foster a welcoming environment.

H. Electioneering Prohibited. No person shall campaign or discuss candidates within 100 feet of the polling place while registration, nomination, or elections are taking place. The Secretary and poll clerks shall inform the public of their inability to answer any personal questions or to provide opinions about any of the candidates.

I. Disorderly Conduct Prohibited. No photography or recording shall be permitted within 100 feet of the polling place. No harassment, intimidation, or other disorderly conduct shall be permitted within 100 feet of the polling place. No loitering shall be permitted within 100 feet of

the polling place. Individuals, including poll watchers, in violation of this section shall be subject to removal and/or arrest by the Isleta Police Department.

03-05-03. Access for Voters with Disabilities

A. Voters with disabilities who are unable to physically walk from their vehicle to the polling place shall receive registration and voting assistance from poll clerks. Voters must park their vehicles at the polling location where the poll clerk will allow them to vote from their vehicle using the procedures defined in this section.

B. Voter Registration. To assist voters with disabilities with registration, poll clerks shall manually retrieve an identification card from a voter in their vehicle. The poll clerk shall bring the voter's identification card to the Census Department representative of the Elections Board at the polling place for purposes of determining the voter's eligibility to register.

C. Candidate Nomination. Upon the determination by the Census Department representative of the Elections Board that the voter is eligible to register, the poll clerk shall bring the registration book to the voter's vehicle for the voter's signature, as well as the nomination ballot. After the voter signs the registration book, the poll clerk shall provide the nomination ballot to the voter, who may cast their candidate nomination through handwritten ballot. The poll clerk shall then bring such handwritten ballot to the voting machine for submission. The poll clerk shall be accompanied by an Isleta Police Department officer.

D. Election. On election day, the poll clerk shall manually retrieve an identification card from a voter in their vehicle. The poll clerk shall bring the voter's identification card to the Census Department representative of the Elections Board at the polling place for purposes of determining the voter's registration status and eligibility to vote. Upon determining that the voter is registered, the poll clerk shall bring the voter registration book to the voter's vehicle for the voter's signature, as well as the election ballot. After the voter signs the registration book, the poll clerk shall provide the election ballot to the voter, who may cast their vote through handwritten ballot. The poll clerk shall then bring such handwritten ballot to the voting machine for submission. The poll clerk shall be accompanied by an Isleta Police Department officer.

03-05-04. Poll Watchers

A. Any registered voter, including candidates, may serve as a poll watcher. No prior notice to the Secretary or Elections Board shall be required. However, no member of the Elections Board or Tribal Council may act as a poll watcher.

B. Poll watchers are permitted to observe the poll clerks and voters during any voter registration, candidate nomination, and elections. Poll watchers shall remain in the area designated by the Elections Board during polling.

C. Poll watchers shall not speak to voters while they are registering or voting.

D. Poll watchers shall not speak to anyone about candidates while at the polling site.

E. Poll watchers are prohibited from filming or taking photography at the polling site and during the vote count.

F. At the close of polling, poll watchers are permitted to observe poll clerks obtain tabulations from electronic voting machines. Poll watchers shall be permitted to be in the room while electronic voting system results are tallied and to be positioned such that they can monitor the tabulation. Their exact placement at all times shall be at the discretion of the Secretary.

G. In the event of a hand count, including a recount, poll watchers may be permitted to observe the poll clerks engaging in such count, but shall not be permitted to review each individual ballot. Their exact placement at all times shall be at the discretion of the Secretary, who may determine that poll watchers may not be permitted on-site due to space constraints but may be provided remote viewing access, in accordance with Section 03-06-02.

H. Poll watchers are prohibited from interfering with voting or with the poll workers' performance of elections duties, including counting and tallying. Any harassment of a voter or poll clerk shall result in the removal of the poll watcher from the polling location for the remainder of the day.

I. A poll watcher may file any challenge authorized under Section 03-10-01(A).

03-06

COUNTING AND TALLYING

03-06-01. Initial Counting and Tallying

A. **Electronic Voting System – Counting and Tallying.** For all nominations and election events, after the polling places close, results shall be counted by the voting machine and signed by the poll clerks that were present for the tabulation. If an electronic voting machine is used, the voting machine's results shall serve as the primary and official basis for counting and tallying ballots deposited into the voting machine.

B. **Paper Ballots – Counting and Tallying.** When hand counting ballots is required, poll clerks shall tabulate the ballots and add such count to the certified results of the electronic voting system, with the Secretary certifying the final result. Hand counting paper ballots shall only be required when:

- i. A dysfunctional electronic voting system requires the use of paper ballots.
- ii. Handwritten ballots are submitted through early voting under Section 03-04-01.
- iii. Paper ballots are requested under Section 03-01-05(E).

C. Hand counting results from the electronic voting system shall not be required unless a valid recount challenge is timely made under Section 03-10-02(D).

D. Certification of Results. The Secretary shall certify the results of each nomination event and election. Tribal Council need not approve a certification by the Secretary prior to its public posting.

03-06-02. Recount Method

A. Upon a valid recount challenge submitted according to Section 03-10-02(D), all ballots shall be hand counted by the Secretary and poll clerks.

B. Hand counting for purposes of a recount may, at the Secretary's discretion, take place at a different location than the initial count in order to accommodate the Board's need for additional space. At the Secretary's discretion, poll watchers may be excluded from in-person monitoring of hand recounts, in which case the opportunity for remote or virtual monitoring may be provided if the Secretary has access to the necessary equipment and technology to do so.

03-07

VOTER REGISTRATION AND CANDIDATE NOMINATIONS

03-07-01. Voter Registration Co-Occurs with Candidate Nomination; Location; Date.

A. For all special and general elections, voter registration shall be held on the same day as candidate nomination. Voters shall be eligible to register for a special election only if they registered in the preceding general election.

B. For general elections, the Secretary, under advisement of the Elections Board, shall designate voter registration locations within the Pueblo, which shall be operational during the hours of 8:00 a.m. to 7:00 p.m. on the last consecutive Saturday and Sunday of October.

C. For special elections, the Secretary, under advisement of the Elections Board, shall designate a date and registration place at a public location within the Pueblo, which shall be operational during the hours of 8:00 a.m. to 7:00 p.m., at least ten days prior to the special election date.

D. No Registration Date Prior to Recall Election. No separate voter registration event will take place prior to a recall election, as only those voters who registered in the prior general election are eligible to vote in any recall election.

03-07-02. Voter Registration

A. List of Eligible Voters. Prior to the voter registration and candidate nomination event, the Census Department representative of the Elections Board shall provide the Secretary with the list of Tribal Members who are eligible to register to vote.

i. For general elections, any enrolled member of the Pueblo of Isleta aged 18 years or older on the date of election shall be eligible to register to vote.

- ii. For special elections, only those persons who registered to vote in the preceding general election are eligible to register to vote.

03-07-03. Procedure at Voter Registration and Candidate Nomination Event

A. Upon entry at the polling site, each individual shall provide sufficient information to the poll worker to identify themselves as an eligible voter. The poll worker may request the voter's date of birth, address, and Census Enrollment I-number. The poll worker may require photo identification if inadequate information is provided and if the poll worker is unable to identify the voter on the Census Department's list of Tribal Members eligible to register to vote.

B. Upon confirmation by the poll worker that the voter is eligible to register, the voter shall sign the voter eligibility book to confirm and record their registration.

C. The Census Department representative appointed to the Elections Board shall have the authority to determine whether an individual is eligible to register to vote. Such decision is final. No provisional ballots shall be issued to individuals deemed ineligible to vote.

D. All persons that register to vote shall have the opportunity to cast their ballot to nominate candidates on the same day and at the same location as the voter registration event.

03-07-04. Nomination Results Notice – Certified by Secretary.

A. General Elections; Nominated Candidates. In general elections, the two candidates receiving the greatest number of votes for Governor shall be the only final candidates for the Office of Governor. The top 14 persons receiving the greatest number of votes for Tribal Council shall be the only final candidates for the seven positions for Tribal Council. If an electronic voting system is used, the results shall be signed by the poll clerks that were present for the count and certified by the Secretary. Tribal Council need not approve a certification by the Secretary prior to its issuance.

B. Special Elections; Nominated Candidates. In special elections, the three candidates receiving the greatest number of votes shall be the only final candidates. If an electronic voting system is used, the results shall be signed by the poll clerks that were present for the count and certified by the Secretary. Tribal Council need not approve a certification by the Secretary prior to its issuance.

C. Notice. Upon tabulation of nomination ballots, the Secretary shall prepare public notice of the nomination results. The public notice shall list the nominated candidates in alphabetical order for each Office. The public notice shall also include the number of votes each candidate received, including for those candidates that were not nominated. The public notice shall also provide the total number of voters that registered at the nomination election.

D. Deadline to Post Notice. Notice of nomination results shall be posted no later than the day following polling; except that in a special election, if the re-registration and nomination event

occurs exactly ten days prior to the special election, the notice of nomination results must be posted the same day as the nomination event.

03-08

CONDUCTING SPECIAL AND GENERAL ELECTIONS

03-08-01. Election Date

A. General Election Dates. A general election shall be held on the Saturday following Thanksgiving of each even numbered year for the purpose of electing a Governor and Tribal Council members.

B. Special Election Date. Special elections shall be held within thirty days following the date upon which Tribal Council declares a vacancy pursuant to the Pueblo of Isleta Constitution. The Elections Board shall designate the date of the special election in conformity with this Code.

03-08-02. Elections Procedures

A. List of Registered Voters. Prior to the election, the Census Department representative of the Elections Board shall provide the Secretary with the list of registered voters.

B. Voter Sign-In. Registered voters shall be required to sign-in upon entering the polling location. Only persons already registered to vote shall be permitted entry at the polling site.

C. Eligibility as a Registered Voter. Any dispute as to whether a person attempting to sign-in is in fact a registered voter shall be resolved by the Census Department representative of the Elections Board. Such decision is final. No provisional ballots shall be issued to individuals deemed ineligible to vote by the Census Department.

03-08-03. Election Results – Notice Certified by Secretary.

A. General Election; Winning Candidates. For general elections, the candidate receiving the greatest number of votes for the position of Governor shall be the winning candidate. The top seven candidates for Tribal Council receiving the greatest number of votes shall constitute the Tribal Council. If an electronic voting system is used, the results shall be signed by the poll clerks that were present for the count and thereafter shall be certified by the Secretary. Tribal Council need not approve a certification by the Secretary prior to its issuance.

B. Special Election; Winning Candidate. For special elections, the candidate receiving the greatest number of votes for the position shall be the winning candidate. If an electronic voting system is used, the results shall be signed by the poll clerks that were present for the count and thereafter shall be certified by the Secretary. Tribal Council need not approve a certification by the Secretary prior to its issuance.

C. Notice. Upon tabulation of election ballots, the Secretary shall prepare public notice of the election results. Those elected to Tribal Council shall be listed in alphabetical order. The public notice shall also include the number of votes each nominated candidate received.

D. Deadline to Post Notice. Notice of election results shall be posted no later than the day following the final day of polling.

03-08-04. Tie Vote

In the event of a tie in any election, the incumbent Tribal Council shall decide the winner by lot using a methodology of random chance. The Tribal Council shall do so in the next regularly scheduled Tribal Council meeting occurring after either the deadline for a recount challenge under Section 03-10-02(D), or after a recount is completed, whichever is later. No challenge as to the Tribal Council's determination of the winner of a tie vote determined by lot shall be permitted.

**03-09
RECALL ELECTIONS**

03-09-01. When Conducted

A. The purpose of a recall election is to determine whether an elected official should be removed from their position in Office.

B. A recall election shall be held when either:

i. Pursuant to Article VII, Sec. 2(a) of the Constitution, the Tribal Council has voted by no less than a two-thirds vote to remove and recall an elected official based on malfeasance in office or gross neglect of duty and thereafter voted by no less than a two-thirds vote to hold a referendum election; or

ii. Pursuant to Article VII, Sec. 3 of the Constitution, the requisite number of voters present to Council a petition for recall of an elected officer based on malfeasance in office or gross neglect of duty.

03-09-02. Procedure, Election Dates, Voter Participation Thresholds

A. Recall Petition; Number of Signatures Required. In order to be certified by the Secretary, a petition by voters for the recall of an elected official shall require the signatures of at least 25% of the voters registered to vote in the preceding general election.

B. Recall Petition; Certification Procedure. A recall petition shall be filed with the Secretary, who shall present the same to the Elections Board in a special meeting held within ten days of the petition's filing. In the Elections Board meeting, the Census Department representative of the Elections Board shall first verify the names and registration status of voters that signed the petition. Based upon that review, the Elections Board shall recommend that the Secretary certify the recall petition as either sufficient or insufficient to trigger a recall election. If the recall petition is certified by the Secretary as sufficient, a recall election must be held within twenty-five days of the petition's filing with the Secretary. The Elections Board shall immediately identify the polling location and the Secretary shall post notice as soon as is feasible, but no less than ten days prior to the recall election.

C. Referendum election authorized by Council. Upon the Tribal Council's determination to hold a referendum election after the Council's affirmative vote to remove an elected official, the Secretary shall provide notice to the Elections Board. Within ten days, the Elections Board shall hold a special meeting to identify the polling location and the Secretary shall post notice as soon as is feasible, but no less than ten days prior to the referendum election. The referendum election shall be held within twenty-five days of the Tribal Council's decision.

D. Voter Participation Threshold. In any recall election, the elected official subject to removal shall only be removed if the following voter participation thresholds are met:

- i. Not less than 50% percent of the voters registered in the preceding general election vote; and
- ii. The majority of those voting cast their ballots in favor of removal.

03-09-03. Voting in Recall Election

A. The eligible voters in a recall election shall be limited to those members of the Pueblo who registered to vote in the last preceding general election.

B. Prior to the recall election, the Census Department representative of the Elections Board shall provide to the Secretary the list of voters registered in the last general election. At the election, the Census Department representative shall have the authority to determine whether an individual is eligible to vote. Such decision is final. Only those that are eligible to vote shall cast their ballot at the election. No provisional ballots shall be issued to individuals deemed ineligible to vote by the Census Department representative.

C. No voter registration nor candidate nomination event shall be held for a recall election, as voter registration is determined solely by the preceding general election.

03-09-04. Recall Results Notice – Certified by Secretary.

Upon the tabulation of ballots, but no later than the day following the election, the Secretary shall issue public notice of the results. The public notice shall identify the winning position and the percentage of eligible voters that cast a ballot in the election.

03-10

CHALLENGES; RESOLUTION OF ELECTION CONTROVERSIES AND DISPUTES

03-10-01. Standing

A. Standing. All Tribal Members eligible to register to vote having standing to challenge:

- i. A determination by Tribal Council as to candidate eligibility;
- ii. Election results, including recounts;

- iii. Errors or omissions in notices, forms, or procedures;
- iv. Fraud or corruption by officials;
- v. Voter fraud;

B. Challenge by Elections Board. Any member of the Elections Board may file a challenge with Tribal Council in order to report or seek relief from any action by the Secretary which the Elections Board member believes to be unlawful.

03-10-02. Challenge Procedures

A. Required Contents. A challenge must be submitted in writing on the form published by the Secretary. A challenge must include:

- i. Identifying information of the individual submitting the challenge;
- ii. The basis for the challenge, which must fall within one of the categories provided in Section 03-10-01.
- iii. Justification or basis for the challenge; and
- iv. Requested relief.

B. Receiving Official. Challenges must be signed and submitted in writing to the Secretary, except that challenges by an Elections Board Member against the Secretary shall be signed and submitted in writing to the Tribal Council President.

C. Deadline to Submit Challenge. Unless an earlier deadline is specified in this section, challenges must be submitted by noon of the Tuesday following the election. Untimely challenges shall not be considered.

D. Recount; Immediate Action by the Secretary and Elections Board Required. A recount challenge must be submitted to the Secretary no later than the business day following the election event. A recount challenge shall only be considered by the Secretary if the margin between the two candidates receiving the greatest number of votes for an office is less than 25. A recount challenge based solely on speculation of the dysfunction of an electronic voting system shall not be considered by the Secretary. If the Secretary determines that a recount challenge meets the requirements of this Section, the Elections Board shall immediately begin the recount according to Section 03-06-02. The results of the completed recount shall be final and shall not be subject to appeal.

E. Candidate Eligibility; Determination by Tribal Council. A challenge relating to Tribal Council's determination as to candidate eligibility must be submitted to the Secretary the business day following the Secretary's publication of notice of eligible candidates. If the Secretary determines that a candidate eligibility challenge meets the requirements of this Section, the Secretary shall immediately inform Tribal Council. Tribal Council shall provide written notice to

both the challenger and to the relevant candidate and shall provide the opportunity for each to be heard on the challenge at the next regularly scheduled Tribal Council meeting, unless the Tribal Council determines to hold an earlier special meeting. The challenger and the relevant candidate shall be permitted to present witnesses and documents in the hearing, if Council deems such evidence to be relevant to the challenge. The Tribal Council shall make its determination on the challenge through a public vote held during the hearing and shall issue a written decision within fourteen days of the hearing.

F. Errors and Omissions; Determination by Secretary. Any challenges about the contents of notices, forms, poll clerk conduct, or elections procedures shall be submitted directly to the Secretary who shall immediately make a determination as to whether corrections are necessary. The Secretary has authority to amend any notice, form, or procedure or to correct poll clerk conduct. In the event the Secretary amends a notice, the date of the original notice shall be considered the date of posting, not the date of the amended notice.

i. Challenges under this subsection filed prior to the nomination or election date shall be made within two calendar days of the complained-of action.

ii. Challenges under this subsection related to nomination-day or election-day procedures or signage must be made during polling. The poll clerks shall have forms on-site available for the public to file such challenges.

iii. The initial determination on any Errors and Omissions challenge shall be made by the Secretary, who shall communicate the same orally to the challenger. No written notice of the Secretary's decision on an Errors and Omissions challenge shall be required. If the challenger disagrees with the Secretary's determination, they may file an appeal with the Elections Board. The Elections Board shall hold a hearing as soon as is reasonably feasible on any appeal. Notice of the hearing shall be provided to the party initiating a challenge. The Elections Board shall advise the Secretary as to its recommendation during the hearing. The Secretary shall issue a written decision memorializing the Election Board's decision within five days of the hearing.

iv. The decision of the Elections Board may be appealed to Tribal Council within ten days of the Elections Board hearing date.

v. In hearing an appeal under this subsection, Tribal Council shall provide notice and an opportunity to be heard to the party initiating the challenge as soon as is reasonably feasible after receipt of the written Elections Board decision. The challenger and the entire Elections Board shall be invited to participate in such hearing, along with any witnesses with relevant information. The Tribal Council shall make its determination on the challenge through a public vote held during the hearing and shall issue a written decision within fourteen days of the hearing.

G. Fraud or Corruption by Officials, or Voter Fraud; Determination by Elections Board. Any challenge involving Fraud or Corruption by Officials or Voter Fraud shall be submitted to the Secretary, who shall bring the same to the Elections Board. If the Elections Board determines that

the challenge meets the requirements of this Section, it shall hold a hearing as soon as is reasonably feasible; unless the Secretary deems the requested relief to be proper, in which case no hearing shall be required in order for such relief to issue. If a hearing is required, the Elections Board shall provide notice of the hearing and an opportunity to be heard to the party initiating the challenge. The Elections Board shall advise the Secretary as to its recommendation during the hearing. The Secretary shall issue a written decision within five days of the hearing.

i. The decision of the Elections Board and the Secretary may be appealed to Tribal Council within ten days of the Elections Board hearing date.

ii. In hearing an appeal under this subsection, Tribal Council shall provide notice and an opportunity to be heard to the party initiating the challenge as soon as is reasonably feasible after receipt of the written decision from the Elections Board. The challenger and the entire Elections Board shall be invited to participate in such hearing, along with any witnesses with relevant information. The Tribal Council shall make its determination on the challenge through a public vote held during the hearing and shall issue a written decision within fourteen days of the hearing.

H. Challenge by Elections Board Member. Any Elections Board Member may challenge the conduct or decisions of the Secretary as unlawful by filing such challenge with the Tribal Council President within seven days of the complained-of action. Upon receipt of such a challenge, the Tribal Council President shall provide notice to the Secretary and shall schedule a hearing with the Tribal Council as soon as is reasonably feasible. The Secretary and the entire Elections Board shall be invited to participate in such hearing, along with any witnesses with relevant information. The Tribal Council shall make its determination on the challenge during its public meeting to hear the challenge and shall provide such determination in writing to the challenger within fourteen days of the hearing.

I. Final Decision. The decision on any elections challenge by the official designated in this chapter shall be final and shall not be subject to judicial review.

03-11 VOTER RECORDS SYSTEM

03-11-01 Confidentiality of Ballots.

The Secretary and poll workers shall maintain strict confidentiality of used ballots. Information regarding who a voter nominated or voted for shall not be publicly disclosed.

03-11-02 Records Management and Integrity

A. For each election, the Census Department shall be responsible for developing voter lists and signature rosters so that poll clerks may verify voter registration information. Those records shall be maintained by the Census Department during the election period.

B. Upon the Secretary's certification of nomination results, all ballots from the nomination shall be maintained in a sealed box by the Isleta Police Department. The box shall be transported, opened, and/or resealed only upon directive of the Secretary.

C. Upon the Secretary's certification of election results:

i. The voter lists, signature rosters, nomination results, and election results shall be converted into electronic records to be archived by the Secretary.

ii. Hardcopy records of the voter lists, signature rosters, nomination results, and election results should be retained by the Isleta Police Department for safekeeping for a period of at least ninety days. These records shall be maintained in a sealed box, which shall be transported, opened, and/or resealed only upon directive of the Secretary. These records may be destroyed only after ninety days and upon directive of the Secretary.

iii. Ballots from the nomination and the election should be retained by the Isleta Police Department for safekeeping for a period of at least ninety days. These records shall be maintained in a sealed box, which shall be transported, opened, and/or resealed only upon directive of the Secretary. These records may be destroyed only after ninety days and upon directive of the Secretary.

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 (15th) 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 (15th) 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;

G. fail to report delivery, distribution or sales of cigarettes on or from Pueblo Lands;

H. fail to retain invoices and records required by this Chapter;

I. fail to cooperate with the Tax Administration Division, or its agent, in its conduct of its duties under this Chapter;

J. 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 (25th) day of each month, or the next business day if such twenty-fifth (25th) 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 (121st) 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:

- i. 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");
- ii. 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;

- iii. All civil actions in which the cause of action arose, in whole or in part, on Pueblo Lands;
- iv. 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:
 - i. Class A Misdemeanor.
 - ii. Class B Misdemeanor.
 - iii. Class C Misdemeanor.
 - iv. Class D Misdemeanor.
 - v. Class E Misdemeanor.

- B. Penalties for Misdemeanors are as follows:
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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.
 - v. 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:
 - i. A banishment order lawfully issued by the Tribal Council;

- ii. A banishment order lawfully issued by the Governor;
- iii. Any provision of the Pueblo of Isleta Law and Order Code;
- iv. Resolution designating restricted sites and prohibiting photography or recordings on such sites;
- v. Any lawfully issued permit, license, or lease;
- vi. A contractual obligation of confidentiality.

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

- i. The defendant committed a violation of a Pueblo of Isleta law, resolution, order, ordinance, permit, license, or lease;
- ii. The violation occurred within the external boundaries of the Pueblo of Isleta;
- iii. The defendant is not an enrolled member of a Tribe;
- iv. The violation threatens or impacts, whether directly or indirectly, the political integrity, economic security, or health or welfare of the Pueblo of Isleta;
- v. The defendant was provided notice of the suit through service of process that complies with the Federal Rules of Civil Procedure; and
- vi. 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:

- i. Declaratory judgment;
- ii. Attorney's fees
- iii. Injunctive relief, including a preliminary injunction or ex parte temporary restraining order;
- iv. 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;
- v. Compensation for unjust enrichment;

vi. Civil penalties of up to \$10,000 per violation. In determining the civil penalty to apply, the Court shall consider for each violation:

1. The seriousness of the violation;
2. The economic or other benefit to the violator resulting from each violation;
3. Any opportunity costs to the Pueblo of Isleta or to an enrolled member of the Pueblo of Isleta resulting from the violation;
4. Whether the violation, by its nature, threatened or impacted, whether directly or indirectly, the sovereignty or political self-governance of the Pueblo of Isleta;
5. 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;
6. The violator's intent, including whether the violator knew or should have known of the violation;
7. Any attempts by the violator to notify the Pueblo of Isleta of their violation;
8. Any attempts by the violator to remediate their violation;
9. Any history of other violations by the same person or entity;
10. 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:
- i. Drug offenses;
 - ii. Violent crimes;
 - iii. Weapons offenses;
 - iv. Theft and white-collar offenses;
 - v. Traffic Code offenses of driving on a revoked or suspended license;

- vi. Traffic Code offenses of driving while intoxicated;
- vii. Domestic violence offenses; and
- viii. 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.

- i. 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.
- ii. 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:

- i. Either the Isleta Prosecutor or the Isleta Legal Department may represent the Isleta Police Department in any forfeiture action under this section.
- ii. 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.
- iii. 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.

- iv. The Isleta Tribal Court shall hold a hearing no sooner than thirty days after service of process is complete.
- v. The burden shall be on the Isleta Police Department to show by a preponderance of the evidence that either:
 - 1. 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
 - 2. 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.
- vi. 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:
 - 1. The nexus between the property and the property owner's commission of a violation of law;
 - 2. The nature of the underlying crime;
 - 3. The property owner's level of intent, malice, or wanton recklessness for the safety of others in the commission of the underlying crime;
 - 4. Whether the property owner is a habitual offender;
 - 5. The likelihood that the property owner will use the property to commit the same or a similar crime in the future;
 - 6. The importance of the property to the property owner's livelihood.
- vii. The Order of Forfeiture shall include:
 - 1. A description of the property at issue;

2. An order that the property is owned by the Isleta Police Department by virtue of its involvement in criminal activity;
3. Direction as to the means of liquidation of the property, such as through public auction or some other method of sale or conversion;
4. 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.

C. 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:

- i. attempts to commit a battery upon another; or
- ii. 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:

- i. places another in reasonable apprehension of immediate physical injury; or
- ii. threatens another with a deadly or dangerous weapon;
- iii. threatens another with intent to commit physical injury; or
- iv. 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:

- i. causes physical injury or temporary disfigurement; or
- ii. touches or applies force with a deadly or dangerous weapon; or
- iii. 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;

- i. places a Police Officer in reasonable apprehension of an immediate physical injury, or
- ii. threatens a Police Officer with a deadly or dangerous weapon; or
- iii. 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:

- i. causes physical injury or temporary disfigurement to a Police Officer; or
- ii. touches or applies force to a Police Officer with a deadly or dangerous weapon; or
- iii. 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:

- i. places a Household Member in reasonable apprehension of immediate physical injury; or
- ii. threatens a Household Member with a deadly or dangerous weapon; or
- iii. 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:

- i. attempts to commit battery upon a household member; or
- ii. 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:

- i. causes physical injury or temporary disfigurement; or
- ii. touches or applies force with a deadly or dangerous weapon; or
- iii. 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:

- i. “non-tribal member” means an Indian, who is not a recognized tribal member of the Pueblo of Isleta or a Non-Indian person.
- ii. “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.
- iii. “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:

- i. “non-tribal member” means an Indian, who is not a recognized tribal member of a Pueblo of Isleta.
- ii. “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 stray. 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

A. 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

A. 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

A. 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

A. 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

A. 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 stray 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

A. 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:
- i. 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.
 - ii. Altering any brand or mark upon any animal which is the property of another; or
 - iii. 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:

- i. Skinning or removing without permission of the owner any part of the hide of any cattle found dead;
- ii. Taking any livestock for use or work without the consent of the owner;
- iii. Removing the livestock of another from its usual range without the consent of the owner;
- iv. Contracting, selling, or otherwise disposing of any animal without consent of the owner; or
- v. 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:

- i. Taking and detaining any bull for the purpose of improving livestock without the consent of the owner;
- ii. 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
- iii. 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:

- i. Blocks or otherwise interferes with traffic on a highway or public vehicular area, or
- ii. Blocks or lies across or otherwise prevents or interferes with access to or passage across a sidewalk or entrance to a building, or

- iii. Grabs, shoves, pushes or fights another or challenges others to fight, or
- iv. Curses or shouts at or otherwise rudely insults others, or
- v. Begg 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 ceremonial 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:

- i. To be treated with fairness, respect, and dignity and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
- ii. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
- iii. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
- iv. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
- v. 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.
- vi. To read pre-sentence reports relating to the crime against the victim when they are made available to the defendant.
- vii. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
- viii. To be heard at any proceeding when any post-conviction release from confinement is being considered.
- ix. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
- x. The right to copies of any documents filed with the Court regarding the conviction, sentencing, imprisonment, escape or release of the accused.
- xi. 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

- A. **“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.
- B. **“Adult”** means a person who is eighteen (18) years of age or older.
- C. **“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.
- D. **“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.
- E. **“Child, Youth, or Juvenile”** means an individual who is under the age of eighteen (18) years.
- F. **“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.
- G. **“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.
- H. **“Court”** means the Pueblo of Isleta Tribal Court and Appellate Court.

- I. **“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.
- J. **“Criminal Offense”** means any illegal act defined as criminal by law.
- K. **“Culpable Mental State”** means intentionally, knowingly, recklessly, or with criminal negligence.
- L. **“Damaging”** means causing any physical or visual impairment to any surface or structure.
- M. **“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:
- i. Air gun, CO₂ gun, stun gun, blowgun, explosive device, pistol, or other firearm;
 - ii. crossbow, bow and arrow;
 - iii. bayonet, dagger, switchblade, bowie knife, or other kind of knife, except a folded pocket knife;
 - iv. sling shot, club, or chain;
 - v. sword or spear;
 - vi. metal knuckles; or
 - vii. any other instrument capable of causing serious physical injury.
- N. **“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.
- O. **“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.
- P. **“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.
- Q. **“Elder”** means a person who is sixty (60) years old or older.

- R. **“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.
- S. **“Execution”** means the legal process of seizing and selling property to satisfy an obligation to make full restitution pursuant and limited to this enactment.
- T. **“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.
- U. **“Explosives”** means any chemical compound, mixture, or device for which the primary purpose is to function by an explosion.
- V. **“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.
- W. **“Firearm”** means any weapon which propels a bullet or other object through the use of gunpowder.
- X. **“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.
- Y. **“Forged Instrument”** means a written instrument or document which has been altered, falsely signed, or falsely completed.
- Z. **“Fugitive”** means any person charged with a criminal offense who has fled from justice and the jurisdiction where the offense occurred.
- AA. **“Governor”** means the Chief Executive Officer of the Pueblo of Isleta Tribe.
- BB. **“Habeas Corpus”** has the same meaning as set forth in 25 U.S.C. Section 1303.
- CC. **“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.

- DD. **“Intentional”** means that a person's conscious objective is to cause a particular result or to engage in a particular course of conduct.
- EE. **“Intoxication”** means the condition of a person whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol.
- FF. **“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.
- GG. **“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.
- HH. **“Lawful Custody”** means confinement by Court Order, physical, or constructive restraint by a Police Officer.
- II. **“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.
- JJ. **“Livestock inspector”** shall mean a livestock inspector duly authorized by the Tribe and appointed by the New Mexico Livestock Board.
- KK. **“Malicious”** means a deliberate act in an unlawful manner, with or without ill will.
- LL. **“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.
- MM. **“Necessity”** means food, shelter, or any other personal property that is necessary to live.
- NN. **“Offense”** means any criminal conduct prohibited by this Code.
- OO. **“Oral Sexual Contact”** means contact by mouth with the penis, vulva, or anus.
- PP. **“Person”** means every natural person, firm, partnership, association, or corporation and their legal successors.

- QQ. **“Personal Property”** means any tangible property that is movable.
- RR. **“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.
- SS. **“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.
- TT. **“Producing”** means financing, directing, manufacturing, issuing, publishing, or advertising for pecuniary gain.
- UU. **“Prostitution”** means engaging in, agreeing to, or offering to engage in sexual intercourse or sexual contact for money, gratuities, or other consideration.
- VV. **“Public Office”** means any position of employment or appointment within the Pueblo of Isleta Tribe.
- WW. **“Public Place”** means an establishment open to the public, whether it is publicly or privately owned.
- XX. **“Public Servant”** means any employee, servant, agent, attorney, or appointed official or contractor of the Pueblo of Isleta Tribe.
- YY. **“Reckless”** means an act done in conscious disregard of a unjustifiable risk and in gross deviation from reasonable standards of conduct.
- ZZ. **“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
- AAA. **“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.
- BBB. **“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.
- CCC. **“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.

DDD. **“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.

EEE. **“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.

FFF. **“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.

GGG. **“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.

HHH. **“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.

III. **“Spouse”** means a person's partner in marriage whom one is legally married to.

JJJ. **“Tamper”** means any act of interference.

KKK. **“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.

LLL. **“Tribal Council”** means the Pueblo of Isleta Tribal Council.

MMM. **“Tribe”** means the Pueblo of Isleta Tribe.

NNN. **“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.

OOO. **“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.

PPP. **“Vulnerable Adult”** means a person who is vulnerable to assault because of the infirmities of aging or mental incompetence.

QQQ. **“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:
- i. the subject is otherwise subject to lawful arrest;
 - ii. the officer has reasonable grounds to believe the subject has just attempted suicide;
 - iii. 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
 - iv. 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:
- i. 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;

- ii. 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
- iii. 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:

- i. 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;
- ii. Treatment by the Isleta Health Center without the subject's consent, including through medication administration and/or through sedation;
- iii. A restraining order protecting other individuals from the subject if the subject poses a danger to those individuals; or
- iv. 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:

- i. shall not be held in a cell with prisoners;
- ii. shall not be identified on records used to record custody of prisoners;
- iii. shall be provided adequate protection from possible suicide attempts; and
- iv. 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:
- i. The subject's court ordered guardian;
 - ii. A person appointed by the subject through a properly executed healthcare power of attorney;
 - iii. Any person with actual knowledge of the subject's behaviors and of the danger the subject poses to himself and herself or to others;
 - iv. Any person sharing a household with the subject;
 - v. Any person providing care to the subject, regardless of whether such care is court ordered or not;
 - vi. The subject's physician, psychologist, or qualified licensed mental health professional;
 - vii. The Isleta Police Department;
 - viii. The Isleta Prosecutor; or
 - ix. The Isleta Legal Department.
- C. The petition shall include:
- i. A description of the specific behavior or symptoms of the subject that evidences a likelihood of serious harm oneself or to others; and
 - ii. If available and feasible, an initial assessment by a physician, psychologist, or qualified license mental health professional; and
 - iii. 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:
 - i. as a result of a mental disorder, the subject presents a likelihood of serious harm to oneself or to others;
 - ii. the subject needs and is likely to benefit from the proposed treatment; and
 - iii. 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:
 - i. 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;
 - ii. The name and address of the respondent;
 - iii. 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;
 - iv. A description of the relationship between the reporting party and the respondent; and
 - v. 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:
 - i. A statement of the grounds supporting the issuance of the order;
 - ii. The date and time the order was issued;

- iii. A statement that the order shall remain in effect until the hearing date, at which point the order may be extended for a year;
 - iv. The date and time of the scheduled hearing, to be held within ten days of the issuance of the order;
 - v. The text of Subsection (R) of this Chapter, requiring the respondent to relinquish firearms; and
 - vi. 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:
- i. Any recent act or threat of violence by the respondent against self or others, regardless of whether the act or threat involved a firearm;
 - ii. 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;
 - iii. The respondent's mental health history;
 - iv. The respondent's abuse of controlled substances or alcohol;
 - v. The respondent's previous violations of any court order;
 - vi. Previous extreme risk firearm protection orders issued against the respondent;
 - vii. The respondent's criminal history, including arrests and convictions for violent felony offenses, violent misdemeanor offenses, crimes involving domestic violence or stalking;
 - viii. 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

- ix. 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:
- i. A statement of the grounds supporting the issuance of the order;
 - ii. The date and time the order was issued;
 - iii. The date and time the order expires;
 - iv. Information pertaining to any recommendation by the court for mental health or substance abuse evaluations, if applicable;
 - v. Notice that the respondent is entitled to request termination of the order prior to the expiration of the order.
 - vi. The text of Subsection (R) of this Chapter, requiring the respondent to relinquish firearms; and
 - vii. 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:
- i. Prepare a receipt identifying all firearms that have been relinquished or taken;
 - ii. Provide a copy of the receipt to the respondent;
 - iii. File the original receipt with the Isleta Tribal Court;
 - iv. 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:
- i. The national instant criminal background check system;
 - ii. All federal or state or tribal computer-based systems and databases used by law enforcement or others to identify prohibited purchasers of firearms; and
 - iii. 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.