



Law and Order Code

Pueblo of Isleta

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- 31-08-14. Right of Access to Records

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 chapter 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 chapter 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 chapter 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 chapter 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
- 03-09 – Recall Elections
- 03-10 – Challenges; Resolution of Election Controversies and Disputes
- 03-11 Voter Records System

Tribal Council adopted Resolution No. 2024-099 on September 24, 2024, adopting the Children’s Code, by titling Title 31 – “Children’s Code” and adding the following chapters:

- 31-01 – General Provisions
- 31-02 – Voluntary Placement Agreement
- 31-03 – Delinquency
- 31-04 – Attendance for Success
- 31-05 – Families in Need of Court-Ordered Services
- 31-06 – Child Abuse and Neglect
- 31-07 – Suspension or Termination of Parental Rights
- 31-08 – Customary Adoption

Tribal Council adopted Resolution No. 2024-030A on September 27, 2024, amending the Pueblo of Isleta Fair Labor Standards Ordinance 02-04-02 and 02-04-04 to expand the definition of public safety employee and set the base work period for Fire Department employees.

Tribal Council adopted Resolution No. 2024-116 on November 5, 2024, adopting the Pueblo of Isleta Fiscal and Contracting Code as Title 10 of the Tribal Law and Order Code and adding the following chapters:

- 10-01 – General
- 10-02 – Purchasing
- 10-03 – Budget and Purchase Authorities, Variances and Modifications, and Reversions
- 10-04 – Capital Expenditures, Travel, Licensure, Reimbursements, Subscriptions, Blanket Purchase Orders
- 10-05 – Department Accountability
- 10-06 – Non-purchase Contracts
- 10-07 – Disposal, Liquidation, Surplus

Tribal Council adopted by motion on September 24, 2024 the Pueblo of Isleta Business Permit Code with Corrections. The Business Permit Code has been codified in Title 5 – Land Use and Leasing, Chapter 4, adding the following sections:

- 05-04-01. Short Title
- 05-04-02. General Provisions

- 05-04-03. Activities Requiring Permit
- 05-04-04. Permit Classes
- 05-04-05. Permit Conditions
- 05-04-06. Permit Procedure – Application, Amendment, Renewal, Transfer/Conveyance
- 05-04-07. Permit Denials, Revocations, Suspensions, and Special Conditions
- 05-04-08. Audits, Enforcement, and Penalties

Tribal Council adopted Resolution No. 2024-117 on November 5, 2024, adopting the Pueblo of Isleta Nuisance Code into Chapter 7 of the Land Use and Leasing Code and adding the following sections:

- 05-07-01. General Provisions
- 05-07-02. Civil Nuisances – Prohibited
- 05-07-03. Exceptions
- 05-07-04. Enforcement and Penalties

Tribal Council adopted Resolution No. 2024-088A on October 29, 2024, amending the Pueblo of Isleta Gaming Ordinance, as approved by the National Indian Gaming Commission on November 26, 2024. The Pueblo of Isleta Gaming Ordinance is adopted into Title 6 of the Tribal Law and Order Code as follows:

- 06-01-01. Purpose
- 06-01-02. Permitted Activities; Scope of Gaming
- 06-01-03. Ownership of Gaming
- 06-01-04. Use of Gaming Revenue
- 06-01-05. Audit
- 06-01-06. Protection of the Environment and Public Health and Safety
- 06-01-07. Licenses for Employees
- 06-01-08. License Locations
- 06-01-09. Repeal
- 06-01-10. Saving
- 06-01-11. Severability

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, code compliance, and public safety aides. 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 Department 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. Public Safety employees of the Direct Department shall have a base work period of 136 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 take 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 even 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 Article IV, Section 9 and Article 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:

- a. Total value of the account created under this Chapter;
- b. Total appropriations over the last Pueblo fiscal year from the account;
- c. 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.

**05-03
RESERVED**

**05-04
PUEBLO OF ISLETA BUSINESS PERMIT CODE**

05-04-01. Short Title

This chapter shall be titled the Pueblo of Isleta Business Permit Code.

05-04-02. General Provisions

A. Authority. This Code is enacted pursuant to the sovereign authority of the Pueblo of Isleta and pursuant to Article V, Section 2 (b) and (i) of the Pueblo of Isleta Constitution.

B. Purpose. The Pueblo of Isleta Tribal Council hereby declares that the regulation of all persons engaged in trade and business on the lands of Isleta Pueblo is necessary to safeguard and promote the political integrity, economic security, and the health and welfare of the Pueblo of Isleta (“Tribe”). The Tribal Council hereby declares that the Tribe has the exclusive authority to regulate the conduct of business within its lands and has the authority to grant, deny or withdraw the privilege of doing business within these lands.

C. Scope.

i. This Code shall be applicable to residents engaged in business within the Pueblo of Isleta lands (“Pueblo Lands”).

ii. Any person, including non-residents not subject to this chapter, who has a business or conducts business within Pueblo Lands shall be deemed to have consented to:

1. Be bound by Isleta law;
2. The exercise of civil jurisdiction by the Isleta Pueblo Tribal Court; and
3. Be subject to civil enforcement in the event of violations of Isleta law.

D. Authorized Administrator.

i. The Treasurer shall be responsible for ensuring the overall administration and enforcement of this chapter but may delegate any administration and enforcement responsibilities to the Treasury Department or the Tax Administration Division. The Governor shall be the final decision maker over any disputes.

ii. The Surveying and Mapping Department shall be responsible for recording all permits issued under this Chapter.

iii. The Treasurer shall track dates of issuance of each business permit, fees paid, and expiration dates of each business permit.

E. The following definitions shall apply to this chapter:

- i. **Business:** Any activity engaged in by any person, or caused to be engaged in by any person, with the object of gain, benefit or advantage, either direct or indirect, such as conducting a trade, profession, or commercial activity involving the sale of any property or services.
- ii. **Food Vendors:** Any person who sells any food or food product intended for human consumption, including hot foods and foods intended for immediate consumption.
- iii. **Mobile Commercial Vendor:** Any non-tribal member engaged in business that regularly sells goods or services on a schedule or by appointment or invitation by routine customers located within Pueblo Lands.
- iv. **Peddler:** Any person engaged in business of a temporary or transient nature who sells goods or services from a location which is not a permanent structure or building.
- v. **Person:** Any person or entity, including business, partnership, corporation, association, organization or other legal entity of any kind. Must be an adult over 18 years of age.
- vi. **Place of Business:** The location where a business activity, including any transactions, operations, and production, is conducted. A business may have multiple places of business, but must apply for a business permit for each location.
- vii. **Retail Cigarette Vendor:** A person who sells cigarettes and/or tobacco products at retail to a consumer and the cigarettes and/or tobacco products are not intended for resale.
- viii. **Tribal Member:** Any person recognized as being an Isletan by the laws of the Pueblo.
- ix. **Tribal Member Owned Business:** A business owned by an Isleta Pueblo Tribal Member who holds fifty-one percent (51%) or more ownership rights in the business.
- x. **Wholesale Cigarette Distributor:** A person who possesses, transports and sells cigarettes and/or tobacco products for wholesale or resale purposes.

05-04-03. Activities Requiring Permit

- A. Any resident, non-resident, tribal member, non-member Indian or non-Indian who conducts or engages in business and whose business is located within Pueblo Lands shall be required to obtain a business permit issued by the Tribe. No person shall operate a business within Pueblo lands without a valid business permit as required by this Code.
- B. No minor child shall be allowed to hold a business permit.
- C. A separate business permit shall be required for each location or place of business.
- D. A separate business permit shall be required for each type of cigarette business conducted, even if the businesses are operated out of one location. For example, if there is a

retail operation and a wholesale operation located at the same place of business, a business permit shall be required for each type of business and the appropriate fee paid for each type of business permit.

E. The Treasurer may require a special permit with specific conditions not specifically contemplated in this Code in order to regulate business activity within Pueblo Lands in a manner that the Governor deems reasonably necessary to protect the health, safety, property, or welfare of the Pueblo and/or its members.

F. Businesses wholly owned and operated by the Pueblo of Isleta are not required to obtain a Permit under this Code.

G. Business activities classified under Permit Class A are not required to obtain a Permit under this Code.

05-04-04. Permit Classes

A. Class A Businesses are exempt from this code's requirement for a business permit. The following are considered Class A businesses:

- i. Charitable, religious, community, educational organizations, or private individuals which engage in activity to raise funds for social, educational, religious or other purposes that are for the benefit of the Pueblo of Isleta or tribal community members.
- ii. Sellers of farming/agricultural products solely cultivated on Pueblo lands.
- iii. Sellers of Indian oven bread and other traditional food products.
- iv. Occasional yard sales conducted at tribal member residences or properties or conducted at a "flea market" business location where that owner has obtained a Business Permit for that type of activity.
- v. Businesses with the primary place of business located outside of the Pueblo that are operated by non-resident persons who are not Tribal Members, as long as the business is not engaged in peddling.

B. Class B Businesses are not required to pay the business permit fee but are required to obtain a Class B business permit for registration and recording purposes. The following are considered Class B businesses:

- i. Indian arts and crafts made or maintained for sale, whether wholesale or retail, by any Isleta tribal member.

C. Class C Businesses are those businesses that provide general retail goods or services. In addition to general retail goods, businesses with a Class C business permit can also sell Indian arts and crafts as identified above. Class C businesses include commercial food sales, other than Indian oven bread and other traditional food products, from a permanent or fixed location.

D. Class D Businesses are those businesses that sell cigarettes and/or tobacco products at

retail to a consumer and the sale of the cigarettes and/or tobacco products is not intended for resale. In addition to cigarettes and/or tobacco products, businesses with a Class D business permit can also sell general retail goods and Indian arts and crafts.

E. Class E Businesses are those businesses that possess, transport and sell cigarettes and/or tobacco products for wholesale or resale purposes. This does not include retail sales of cigarettes and/or tobacco products.

F. Class F Businesses are those businesses or vendors who sell on a temporary basis and meet the definition of peddler or otherwise engage in door-to-door or mobile solicitations to include food trucks selling retail, prepared food.

G. Class G Businesses are those businesses or vendors who sell goods or services on Pueblo lands to community members on a scheduled or appointment basis or at the invitation or request of residents of the Pueblo. Examples are commercial frozen food sales, propane sales and bottled water sales.

05-04-05. Permit Conditions

A. Each Permittee shall comply with this Code and all applicable federal, state, and tribal laws and regulations. This includes, but is not limited to, allowing all Permittee employees two hours to vote in tribal elections.

B. Each Permittee consents to the civil jurisdiction of the Isleta Tribal Court in legal actions arising pursuant to this Policy and to such enforcement actions arising pursuant to this Code.

C. Each Permittee shall comply with any Order of the Governor to temporarily close businesses on Pueblo lands for tribal traditional activities.

D. Each Permittee is responsible for updating all information that is required for a business permit application during the term of the permit.

E. The business permit shall be displayed in a conspicuous place at the business location identified on the permit.

F. The Permittee is responsible for the conduct of the business's officers, agents and employees and the Permittee assumes all responsibility and liability for activities arising from the conduct of their business and activities occurring at the business location.

G. The Pueblo, its officials, employees, and agents shall not be liable for any damage, loss or harm to any person that may result or occur, directly or indirectly, from the approval, denial, suspension or revocation of a business permit.

H. Permittees must ensure that business facilities comply with safety codes relating to fire prevention, fire safety, and fire escape.

I. Food Vendors: Individuals preparing food products for commercial food sales shall complete a prescribed Indian Health Service Food Handlers class and post or have available the

certificate of completion on premises or readily available. Food vendors shall permit inspection by the Indian Health Service at any time their business permit is active, without requiring prior notice of such inspection.

J. Cigarette Vendors:

- i. All businesses that sell any quantity of cigarettes or tobacco products at retail, including loose leaf tobacco must apply for a Class D Business Permit, and pay the required fee, even if the primary purpose of the business is not cigarette or tobacco product sales and even if the business would otherwise be exempt from permit requirements.
- ii. All businesses that possess, sell, or transport any quantity of cigarettes for resale or as a wholesaler must apply for a Class E Business Permit, and must pay the required fee, even if the primary purpose of the business is not cigarette or tobacco product wholesale and even if the business would otherwise be exempt from permit requirements.
- iii. All cigarette vendors shall comply with all applicable tribal and federal laws relating to the sale and transportation of cigarette and tobacco products on or from Pueblo Lands, including tax and reporting laws.
- iv. Separate permits shall be required for retail cigarette operations and wholesale cigarette distributor operations, even if both businesses operate out of the same location.

K. Each Permittee shall provide each employee who is eligible to vote in Tribal elections two hours of paid leave to participate in the voter registration/candidate nomination day and election day in each Tribal election event, if the employee works on the day of polling.

05-04-06. Permit Procedure – Application, Amendment, Renewal, Transfer/Conveyance

A. An application for a Business Permit shall be submitted on such form as directed by the Treasurer. All applications shall include the following information:

- i. Address of the primary place of business and a description of the operations that take place there; a description of the business and the products/services sold; name and address of the owner or owners of the business.
- ii. Address of the intended place of transactional business within the Pueblo of Isleta, if different from the primary place of business.
- iii. Proof that the business is tribal member or resident owned.
- iv. Trade or business name used by the business and documentation of the business entity's registration with any state or other tribe, if applicable.
- v. Proof that the permit applicant owns or has proper legal interest in the land where the business is to be located within the Pueblo of Isleta.

- vi. A statement regarding the applicant's criminal history, if any.
- vii. A statement that the applicant consents to the jurisdiction of the Tribe, including the Tribal Court, with regards to matters arising from the conduct of business and this Code, and agrees to abide by all applicable tribal and federal laws and regulations.
- viii. If applying for a Class G or Class F permit, the time period during which the applicant intends to conduct business.
- ix. Any additional information and documentation that the Governor deems reasonably necessary to make a determination on issuing a business permit that is in the best interests of the Pueblo and Tribal Members. Additional information or documentation that may be required under this subsection may include but is not limited to:
 - 1. Assessment of likely environmental impacts of the proposed business activities.
 - 2. Assessment of likely nuisance impacts, such as noise and traffic, of proposed business activities.
 - 3. Proof of certifications or licensure relevant to proposed business activities.
 - 4. Proof of bonding or insurance.
 - 5. Proof that neighboring residents or the broader community surrounding the proposed business consent to the business and its location.

B. The following fees are required to be submitted along with the application:

- i. Class B Business Permit – Businesses Required to Register
No Fee
- ii. Class C Business Permit – General Retail/Services:
 - Isleta Tribal Member – \$75.00 per year per owner
 - Non-Member - \$1,000 per year per non-member owner
- iii. Class D Business Permit – Retail Cigarette Vendor
 - Isleta Tribal Member – \$250.00 per year per owner
 - Non-Member - \$1,000 per year per non-member owner
- iv. Class E Business Permit – Wholesale Cigarette Distributors
Per Year - \$5,000.00

v. Class F Business Permit – Peddler
Per Day - \$20.00
Per Week - \$50.00
Per Month - \$200.00 Feast Day
Tribal members are exempt from Class F fees

vi. Class G Business Permit – Mobile Vendors
Per Month - \$100.00
Per Year - \$500.00

vii. Amended Permit Application
\$25.00

C. No refund shall be made for businesses discontinued during a permit term.

D. Except for Class F and Class G business permits, the business permit shall be valid for one (1) year from the date of issuance and is only valid for the location for which it was issued. Class F and Class G permits shall only be valid for the temporary period specified in the permit.

E. Class F business permits are valid only for the location designated by the Pueblo and specified on the Permit. Door to door solicitation is prohibited on Pueblo land.

F. A Permittee must apply for permit renewal at least thirty calendar days prior to the expiration of the existing permit in order to maintain their business without any lapse between permit years.

G. Payment of permit fees are due at time of application or renewal. Fees are not refundable even if the business permit is denied.

H. Permittees are prohibited from engaging in any unfair or deceptive trade practices, including:

- i. Selling merchandise with defects that pose a threat to consumer safety.
- ii. Representing that merchandise has a source, origin, sponsorship, approval, accessories or uses it does not have.
- iii. Representing that the business has a sponsorship, approval or affiliation that it does not have.
- iv. Representing that merchandise is of a particular standard, grade, style or model, if it is not.
- v. Making false or misleading statements of fact concerning the merchandise, its price, or its quality.
- vi. Representing that a consumer transaction involves a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies or obligations ife

representation is false.

- vii. Advertising merchandise with intent not to sell it as advertised.
- viii. False advertising.

I. A Permittee must submit an amended application in the following situations. The business is prohibited from changing the location or class of business unless and until the Governor issues an amended permit:

- i. Any change in the information required in the business permit application. An amended application must be submitted within thirty calendar days of such change.
- ii. A change in the location of the business.
- iii. A change in business class.

J. A business permit is issued to the Permittee and is not transferable and is valid only for the business location specified in the application and on the business permit itself. In the event of a sale or transfer of a business to another family member or individual, that family member or individual, as the new owner, must apply for their own business permit and pay the required fees.

05-04-07. Permit Denials, Revocations, Suspensions, and Special Conditions

A. An application, amendment, or renewal of a business permit shall be denied upon a determination by the Governor's Office that:

- i. The application is incomplete or the appropriate fee has not been paid;
- ii. The applicant does not meet the requirements for issuance of a business permit;
- iii. The applicant has materially misrepresented facts in the application;
- iv. The applicant is presently in non-compliance with applicable law or has engaged in a fraudulent, deceptive, dishonest or illegal trade practice;
- v. The applicant's background or the business activity is contrary to or threatens the political integrity, economic security, safety, health or public welfare of the Tribe or the public; or
- vi. The nature of the applicant's business is not in the best interest of the Pueblo's or its members' health, safety, welfare, political integrity, or economic security and that such threat cannot be reasonably cured through special permit conditions.

B. A permit issued under this policy may be temporarily suspended or permanently revoked upon a determination by the Governor that the Permittee has engaged in any of the following:

- i. Fraud, misrepresentation or incorrect statement in the permit application.
- ii. Fraud or misrepresentation made in the course of carrying on the business.
- iii. Conducting business in an unlawful manner or in such a way as to constitute a danger or nuisance to the health, safety, general welfare, political integrity, or economic security of the Pueblo or the public or environment.
- iv. Failure to comply with any applicable laws or regulations or permitting requirements.

C. Suspension

- i. Upon a suspension determination by the Governor, the Governor's Office shall issue a Notice of Suspension describing the specific grounds for suspension and the term of suspension. The Notice of Suspension shall be served on the Permittee directly by the Isleta Police Department or sent by certified mail with return receipt requested.
- ii. The Permittee shall temporarily suspend all business operations relating to the business permit during the suspension period. Failure to comply with the suspension terms shall result in revocation of the permit.

D. Revocation

- i. Upon a revocation determination by the Governor, the Governor's Office shall issue a Notice of Revocation describing the specific grounds for revocation. The Notice of Revocation shall be served on the Permittee directly by the Isleta Police Department or sent by certified mail with return receipt requested.
- ii. The Permittee shall stop all business operations relating to the business permit upon revocation of the permit.

E. Special Conditions

- i. At the application stage or during a business permit's term, the Governor may issue special permit conditions upon a determination that such special conditions are in the best interests of the health, safety, general welfare, political integrity, or economic security of the Pueblo or the public or environment.
- ii. Special conditions that may be imposed on a Permittee under this subsection include, but are not limited to:
 1. Insurance coverage and/or bonding.
 2. Location change.

3. Compliance with licensure or certification regulations of other jurisdictions.
4. Obtaining ingress/egress permit from the New Mexico Department of Transportation.
5. Environmental assessment.

iii. Upon a determination by the Governor that special conditions are warranted, the Treasurer shall issue a Notice of Special Permit Conditions describing the specific requirements to be met by the Permittee or applicant. The Notice shall be given to the Permittee or applicant by certified mail with return receipt requested.

iv. Special conditions take effect immediately upon receipt of the Notice, unless the Governor prescribes a specific time period to comply.

v. Failure to comply with special conditions shall result in revocation of the permit.

05-04-08. Audits, Enforcement and Penalties

A. The Pueblo of Isleta Police Department is directed and authorized to make inspections of all businesses under this Code, either upon the request of the Governor or upon information of a violation, to determine whether all applicable tribal laws and regulations and terms of this Code and any applicable permit are being observed. All investigative reports of violations shall be brought to the attention of the Governor and Legal Department for enforcement actions pursuant to this section.

B. The Pueblo of Isleta Fire Department is directed and authorized to make periodic inspections of all facilities of any of the businesses issued Permits. The purpose of the inspection is to determine whether fire hazards are minimized, whether all proper precautions for emergency exit have been taken, and whether the businesses are generally being conducted with a maximum amount of safety to the public. All investigative reports of violations shall be brought to the attention of the Governor and Legal Department for enforcement actions pursuant to this section.

C. The Pueblo of Isleta Department of Transportation is directed and authorized to make periodic inspections of all facilities of any of the business issued Permits. The purpose of this inspection is to determine whether parking, easements, and points of ingress/egress comply with applicable law and are in the interests of public safety.

D. Food vendors must permit inspections by the U.S. Indian Health Service.

E. The Treasurer may make systematic inspections and random audits of all businesses within Pueblo Lands to ensure compliance with this Code, and shall make such other inspections and audits as required by all applicable federal and tribal laws and regulations.

F. Every Permittee is required to cooperate with Pueblo departments and employees acting lawfully and in their official capacity.

G. Any person who violates this Code shall be issued a Notice of Violation by the

Governor's Office or Treasurer, which shall:

- i. Describe the violates alleges;
- ii. Require the person to show why they should not be enjoined from doing business on Pueblo lands permanently;
- iii. Direct that business operations cease immediately; and
- iv. A Notice of Violation may, but shall not be required to, provide a reasonable time period to cure.

H. The Governor may assess any of the following penalties for a violation of this Code:

- i. Impose a corrective action plan to allow Permittee to correct or abate the violation and operate the business on the condition that no further violation of this Code or other applicable law or regulation shall occur for the remainder of the permit term or other specified time.
- ii. Suspension of the permit.
- iii. Permanent revocation of the permit and permanent closure of the business.
- iv. Permanent injunction prohibiting the violator from obtaining any future business permit or engaging in any trade within the Pueblo of Isleta.
- v. Civil penalty not to exceed more than \$500 per violation per day.
- vi. Closure of the business.
- vii. Forcible entry and detainer action under the Pueblo of Isleta Law and Order Code to restrain or prevent the occupancy of the building, premises or structure where the business is located.
- viii. Assignment cancellation or lease cancellation in compliance with the Pueblo of Isleta Law and Order Code.
- ix. Seizure and forfeiture of all property at the business location.

05-04-09. Appeals

A. Any adverse action by the Governor may be appealed by an aggrieved business owner by filing a Notice of Appeal with Tribal Council within seven business days of the adverse action. Specifically, appeals of permit denials, suspensions, revocations, special conditions, inspections, audits, and penalty assessments are authorized under this subsection.

B. The Notice of Appeal shall be in writing, dated and signed by the aggrieved business owner. Upon receipt of a Notice of Appeal, the Tribal Council shall set a hearing within thirty calendar days and shall notify the appellant of the same.

C. At the appeal hearing, the Governor or Treasurer shall present the position of the Pueblo,

including any relevant evidence and witnesses. The business owner shall then present their position, evidence, and witnesses. The business owner may be represented by legal counsel. The Pueblo of Isleta Legal Department shall represent the Tribal Council and shall ensure that the hearing's record is complete, that witnesses and parties have the opportunity to present relevant facts, that the Tribal Council applies the proper legal standard in reaching a determination, and that the record is preserved for appeal to the Isleta Tribal Court. A relaxed evidentiary standard shall apply, such that the Tribal Council may consider any relevant evidence if its probative value is not outweighed by its likelihood to cause unfair prejudice, confuse the issues, or create undue delay.

D. The Tribal Council shall issue a written decision on the appeal within thirty calendar days of the hearing.

E. If a Permittee timely files a Notice of Appeal, the Permittee shall be allowed to temporarily continue business operations until such time of a hearing and decision by the Tribal Council unless the Governor determines that an immediate cessation of business operations is necessary to protect the health, safety or general welfare of the Tribe, the community or the public. The Tribal Council decision shall be final.

05-05

RESERVED FOR PUEBLO OF ISLETA GRAZING PERMIT CODE

05-06

RESERVED

05-07

PUEBLO OF ISLETA NUISANCE CODE

05-07-01. General Provisions

A. Short Title. This chapter shall be titled the Pueblo of Isleta Nuisance Code.

05-07-02. Civil Nuisances – Prohibited

A. The following constitute a prohibited nuisance subject to enforcement under this chapter, enacted upon the sovereign and inherent authority of the Pueblo of Isleta upon a finding by the Governor or the Governor's designee, that such activity or property condition causes unreasonable and significant interference with another person's interest in the use and enjoyment of their property. The location, character and habits of the particular region where the alleged nuisance is located are to be taken into account in determining what is unreasonable and significant to an individual living in it. If persons living in the region would regard the invasion as definitely offensive, seriously annoying or intolerable, it is significant. If most persons in the locality would not be substantially annoyed or disturbed, the invasion is not significant, even though the idiosyncrasies of the particular complainant may make it unendurable to him. This code shall apply to all persons and activities on the Pueblo of Isleta. Within the Pueblo of Isleta

Village proper, this code will be strictly enforced to protect the beauty and sacred nature of our Village.

i. Noise Nuisance.

1. Repeated and unreasonable excessive noise from construction, industrial activities, or loud parties, unless approved by the Governor.

2. Excessive vehicular or motorcycle noise, including but not limited to noise due to the use of jake brakes, which are completely prohibited from use on the Pueblo of Isleta except for in cases of emergency, and modification to or improper function of a vehicle's muffler, and excessively loud stereo systems.

3. Habitual or excessive barking dogs or other disruptive animal noises within the exterior boundaries of the Pueblo of Isleta.

ii. Public Health and Safety Nuisance.

1. Improper disposal of waste and/or dumping including but not limited to asbestos, animal remains, or hazardous materials as defined by federal law, raw sewage, municipal solid waste (trash), construction and demolition debris.

2. Neglected or dilapidated properties that pose health or safety risks including broken windows, unsafe structures and building code violations including fire hazards.

3. Any obstructions of sidewalks or roads that impedes public or private roadways or precludes safe passage.

4. Disruptive parties, gatherings, or events not approved by the Governor, that disturb the peace and safety of a neighborhood.

iii. Property Nuisance.

1. Overgrown vegetation, weeds, or "white goods" in yard (refrigerators, stoves and other appliances) or unkept yards.

2. Abandoned or derelict buildings.

3. Graffiti and vandalism that has not been cleaned up by the property owner.

4. Abandoned or inoperable vehicles or equipment on public or private property.

5. Excessive or intrusive outdoor lighting.

6. Leaking barrels containing petroleum, or other toxic liquid, motor vehicle waste including but not limited to oil, batteries or similar waste.

iv. Environmental Nuisance.

1. Air or water pollution that exceeds applicable environmental quality standards.

2. Inadequate waste management or recycling. If solid waste removal is requested from the Pueblo of Isleta, a fee may be associated with this service, towing services or any other services requested from the Pueblo of Isleta..

3. Discharge from vehicles or equipment, including industrial or farm equipment.

4. Offensive or noxious odors emanating from industrial, agricultural, or residential sources.

v. Public Nuisance.

1. Any activity or condition that substantially interferes with the public's right to use and enjoy public spaces.

B. Nothing hereunder shall limit the Pueblo's criminal law enforcement authorities in relation to any nuisance conduct after a reasonable correction period which shall not exceed 90 days.

05-07-03. Exceptions

A. The following shall not constitute a nuisance under this Code:

i. Any activity, property condition, or land-use by the Pueblo of Isleta or its entities.

ii. Any activity, property condition, or land-use explicitly permitted by the Tribal Council or the Governor, including but not limited to through special use zoning permits authorized by the Tribal Council and Permit Authorizations to Enter authorized by the Governor, unless it violates the health and safety of the community.

iii. Emergency response activities.

iv. Cultural, traditional, and religious events.

v. Property uses consistent with the Pueblo of Isleta Zoning Code.

05-07-04. Enforcement and Penalties.

A. The Governor or the Governor's designees shall determine whether conduct or property conditions constitutes a civil nuisance hereunder. Violations may include a civil citation from the Isleta Police Department and will also provide authority for the legal department to bring court action for injunctive relief from the Isleta Tribal Court.

B. Upon a determination by the Governor or the Governor's designee, that conduct or property condition constitutes a civil nuisance hereunder, the following enforcement actions may proceed:

i. A Notice of Violation shall be issued by the Governor or the Governor's designee with a correction period. The Notice of Violation shall describe the nature of the nuisance, state the specific ordinance section that has been violated, provide a reasonable correction period, describe the abatement that is mandated during the correction period, and describe criminal and civil enforcement actions which may proceed upon the violator's failure to correct.

ii. If the violator does not abate the nuisance during the provided correction period, then any of the following penalties may result:

1. The Isleta Legal Department may issue a civil citation of \$250 per day of the ongoing nuisance for up to thirty calendar days after consultation with the Pueblo of Isleta legal department;

2. The Pueblo may take direct action to abate the nuisance in order to rectify public health or safety concerns, including structure demolition or remediation. The costs of such remediation may be assessed against the violator;

3. The Code Enforcement Officer may direct a forcible entry and detainer action against the violator in Isleta Tribal Court to seek a Writ of Restitution to evict them from the property; and/or

4. The Code Enforcement Officer may direct a civil penalty legal action against the violator in Isleta Tribal Court to seek an injunction, civil penalties, and other authorized relief.

**TITLE 6
GAMING**

06-01

PUEBLO OF ISLETA GAMING ORDINANCE

06-01-01. Purpose

The Tribal Council of the Pueblo of Isleta, hereinafter "Tribe," empowered to enact ordinances, hereby enacts this ordinance in order to set the terms for class III gaming operations and other operations on tribal lands.

06-01-02. Permitted Activities; Scope of Gaming

The below-described commercial gaming activities are permitted:

- A. All gaming authorized and permitted by the Ordinance entitled PUEBLO OF ISLETA CLASS II GAMING ORDINANCE, adopted and ordained on March 28, 1994; and
- B. All Class III gaming, as described and defined in 25 CFR § 502 (25 CFR Ch. III (4-1-9 edition)), as that section may be amended from time to time, and any gaming permitted by the State of New Mexico for any purpose, by any person, organization or entity (and such gaming activity to otherwise being prohibited on Indian lands by a Federal statute dealing with a specific gaming activity, including without limitation, the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq*).
- C. Notwithstanding the generality of the foregoing, class III gaming shall be subject to, delimited by, and conducted in compliance with the terms and conditions of the Compact, as it may, from time to time, be amended by the parties thereto.

06-01-03. Ownership of Gaming

The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this Ordinance, except as expressly provided in this Ordinance. Such responsibility shall be executed in a manner consistent with the terms and conditions of the Compact, as it may, from time to time, be amended by the parties.

06-01-04. Use of Gaming Revenue

- A. Net revenue from gaming shall be used only for the following purposes: to fund tribal government operations and programs; provide for the general welfare of the Tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.

B. If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. § 2710(b)(3).

06-01-05. Audit

A. Consistent with the Audit and Financial Statements provisions of the Compact, as the same may, from time to time, be amended by the parties, the Pueblo of Isleta Gaming Regulatory Agency, hereinafter "agency" shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.

B. All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection (A) above.

06-01-06. Protection of the Environment and Public Health and Safety

Class III gaming facilities shall be constructed, maintained, and operated in a manner that is consistent with the Public Health and Safety provisions of the Compact, as they may, from time to time, be amended, and which adequately protects the environment and the public health and safety.

06-01-07. Licenses for Employees.

The agency shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any class III gaming enterprise operated on Indian lands:

A. Definitions. For the purposes of this section, the following definitions apply:

i. Any person, corporation, or other entity providing gaming services within or without a Gaming Facility, shall apply for and receive a license from the agency before participating in any way in the operation or conduct of any class III gaming conducted by the Tribe;

ii. "Key employee" has the same meaning as defined at 25 C.F.R. § 502.14, including any subsequent amendment to such definition; and

iii. "Primary management official" has the same meaning as defined at 25 C.F.R. § 502.19, including any subsequent amendment to such definition.

B. Application Forms.

i. The following notice shall be placed on the application form for a key employee

or a primary management official before that form is filled out by an applicant.

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701, et seq. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authority and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal, or regulatory investigations or prosecutions or when pursuant to a requirement of a tribe or the National Indian Gaming Commission in connection with the issuance, denial, or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to license you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

ii. Existing key employees and primary management officials shall be notified in writing that they shall either:

1. Complete a new application form at contains a Privacy Act notice; or
2. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

iii. The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant:

A false statement on any part of your application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment. (U.S. Code, Title 18, section 1001)

iv. The agency shall notify in writing existing key employees and primary management officials that they shall either:

1. Complete a new application form that contains a notice regarding false statements; or
2. Sign a statement that contains the notice regarding false statements.

C. Background Investigations.

i. The agency shall request from each applicant and his, her or its principals, if applicable, primary management official and from each key employee all of the following information:

1. Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
2. Currently and for the previous 10 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers; provided, however, that any applicant who is a principal, primary management official, key employee, management contractor, manufacturer or supplier of gaming devices, and/or a person providing gaming services, must provide such information currently and from the age of eighteen (18).
3. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (i)(2) of this section;
4. Current business and residence telephone numbers, and all cell phone numbers;
5. A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses and a description of any potential or actual conflict of interests between such businesses and Indian tribes;
6. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
7. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
8. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition, if any;
9. For each misdemeanor for which there is a conviction or an ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date and disposition;
10. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application, and is not otherwise listed pursuant to paragraph (i)(8) or (i)(9) of this

section, the criminal charge, the name and address of the court involved, and the date and disposition;

11. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit as an applicant, principal, primary manager, official or key employee, whether or not such license or permit was granted;

12. A current photograph;

13. Any other information the agency deems relevant;

14. Fingerprints consistent with the procedures adopted by the agency according to 25 C.F.R. § 522.2(h). Pursuant to a Memorandum of Understanding between the Tribe and the National Indian Gaming Commission, tribal police officers shall forward fingerprint cards directly to the Commission; and

15. The relevant financial records of the applicant for the three (3) years preceding the application.

ii. The agency shall conduct an investigation, consistent with the Background Investigation provisions of the Compact, as they may, from time to time, be amended, sufficient to make a determination under subsection (D) below. In conducting a background investigation, the agency shall promise to keep confidential the identity of each person interviewed in the course of the investigation. The background investigation shall include a check of criminal history records information maintained by the Federal Bureau of Investigation. The agency shall request fingerprints from each primary management official and key employee.

D. Eligibility Determination.

i. The agency shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for receiving a gaming license. The finding and background investigation shall be contained in an investigative report. An investigative report shall include all of the following:

1. Steps taken in conducting a background investigation;

2. Results obtained;

3. Conclusions reached; and

4. The basis for those conclusions.

ii. If the agency determines that licensing the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming,

the agency shall not license that person in a key employee or primary management official position.

E. Report to National Indian Gaming Commission.

i. No later than sixty (60) days after the key employee or primary management official begins work at a gaming operation authorized by this ordinance, the agency shall prepare and forward to the National Indian Gaming Commission a notice of results on each background investigation. The notice of results shall contain:

1. Applicant's name, date of birth, and social security number;
2. Date on which applicant began or will begin work as key employee or primary management official; and
3. A summary of the information presented in the investigative report, which shall at a minimum include a listing of:
 - a. Licenses that have previously been denied;
 - b. Gaming licenses that have been revoked, even if subsequently reinstated;
 - c. Every known criminal charge brought against the applicant within the last 10 years of the date of application;
 - d. Every felony of which the applicant has been convicted or any ongoing prosecution; and
 - e. A copy of the eligibility determination.

ii. If a license is not issued to an applicant, the agency:

1. Shall notify the National Indian Gaming Commission;
2. May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System;

iii. With respect to key employees and primary management officials, the agency shall retain applications for licensing, eligibility determinations, and reports (if any) of the background investigations for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment; and

iv. The gaming operation shall not employ any person who does not have a license after ninety (90) days.

F. Granting Gaming Licenses.

- i. If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the agency that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the tribe has provided an application and investigative report to the National Indian Gaming Commission, the agency may issue a license to such applicant;
- ii. The agency shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period under paragraph (G)(1) of this section until the Chairman of the National Indian Gaming Commission receives the additional information;
- iii. If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the agency with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the agency has provided an application and investigative report to the National Indian Gaming Commission, the agency shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The agency shall make the final decision whether to issue a license to such applicant; and
- iv. Within thirty (30) days after the issuance of a license, the agency shall notify the National Indian Gaming Commission of its issuance.

G. Gaming License Suspensions and Revocations.

- i. If, after the issuance of a gaming license, the agency receives from the National Indian Gaming Commission reliable information indicating that a key employee or a primary management official is not eligible for employment under subsection (D) above, the agency shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation;
- ii. The agency shall notify the licensee of a time and place for a hearing on the proposed revocation of a license; and
- iii. After a revocation hearing, the agency shall decide to revoke or to reinstate a gaming license. The agency shall notify the National Indian Gaming Commission of its decision within 45 days of receiving notification that a primary management official or key employee is not eligible for employment.

H. Denying Gaming Licenses.

- i. The agency shall not license a primary management official or key employee if an authorized agency official determines, in applying the standards in subsection (6)(D) for making a license eligibility determination, that licensing the person:
 1. Poses a threat to the public interest;

2. Poses a threat to the effective regulation of gaming; or
3. Creates or enhances the dangers of unsuitable, unfair or illegal practices, methods and/or activities in the conduct of gaming.

06-01-08. License Locations

The agency shall issue a separate license to each place, facility, or location on Indian lands where class III gaming is conducted under this ordinance.

06-01-09. Repeal

Only to the extent that they are inconsistent with this Ordinance, all prior gaming ordinances, or parts thereof, are hereby repealed.

06-01-10. Saving

Nothing in this Ordinance, nor any section or provision hereof, or amendment hereto, is intended to, nor shall it either by construction or application, invalidate or in any other way adversely affect, any other ordinance, resolution, law or regulation of the Pueblo of Isleta.

06-01-11. Severability

In the event that any section or provision of this Ordinance, or any amendment to this Ordinance, is not approved or is made invalid, it is the intent of the Pueblo of Isleta that the remaining sections and provisions of this Ordinance shall continue in full force or effect.

TITLE 10
PUEBLO OF ISLETA FISCAL AND CONTRACTING CODE

10-01
GENERAL TERMS

10-01-01. Short Title

Chapters 1 through 7 of Article 10 of the Isleta Law and Order Code shall be titled the “Fiscal and Contracting Code.”

10-01-02. Purpose

The purpose of the Pueblo of Isleta’s Fiscal and Contracting Code is to govern contracts, purchases, and general operations of the Treasurer’s Office, including by:

- A. Ensuring that POI Departments are able to make purchases consistent with the mission of each Department and the directives of the Tribal Council and Governor, while also maintaining adequate internal controls to protect the Pueblo’s coffers from fraud, waste, abuse, or misuse.
- B. Setting out policies for POI to procure goods and services.
- C. Setting out policies for Budgets and permitted Budget Variances and Modifications, consistent with the Pueblo of Isleta Constitution and this Code.
- D. Establishing means for Pueblo leadership to track compliance and performance of the Treasurer’s Office, the Legal Department, and all other Departments engaged in any transaction.
- E. Implementing oversight over all POI contracts, including those that do not involve any purchase of goods or services, or other monetary transactions, to ensure protection of the Pueblo’s interests.

10-01-03. Treasurer Operations and Divisions

A. Divisions. The Treasurer’s Office includes the following divisions with the following duties. The Treasurer is directed and authorized to manage each of the below divisions and to publish procedures and guidelines directing the day-to-day operations and management of each division, consistent with this Code.

i. Finance - maintains the official financial books and records of the Pueblo. It includes the following sub-divisions:

- 1. Accounts Receivable – collects the money owed to the Pueblo from grants, enterprises, contracts, community members, etc.
- 2. Accounts Payable – pays vendors for goods and services purchased by the Pueblo.

3. Bank & Tax Accounting - monitors and reconciles bank account activity. Calculates, assesses, and collects tax payments.

4. Fixed Assets & Risk Management – maintains, inventories, and tracks all assets meeting the criteria of a fixed asset by maintaining a database and tracking depreciation. Manages insurance policies and submits and monitors claims as required.

5. Payroll – ensures employees are paid on time and that paychecks are accurate.

ii. Financial Planning & Analysis – reviews, analyzes, and develops tools and techniques for ensuring effective and efficient oversight of POI operations and program budgets consistent with the policies, procedures and directives established by the Pueblo’s Governor and Tribal Council.

iii. Grants and Contracts – assures that the Pueblo identifies and applies for available third-party grants and funding opportunities through Authorized Funding Agreements and assures all such funding contracts received by the Pueblo are administered in accordance with the Authorized Funding Agreement requirements.

iv. Procurement – oversees and conducts all purchasing operations including the negotiation, execution and administration of all Funded Purchase Contracts and Purchase Orders for the Pueblo.

v. MIS – responsible for maintaining the technology infrastructure of the Pueblo government departments.

B. Authorization to publish guidelines. The Treasurer is authorized and directed to create and publish guidelines, to include forms, procedures, protocol, and internal controls, relating to the day-to-day management duties of the Treasurer, its divisions, and its administration and interpretation of this Code. Tribal Council authorization is not required prior to the Treasurer’s publication of such guidelines. However, all such guidelines must be consistent with Tribal law including this Code. Any guideline published by the Treasurer shall be null and void upon a determination by the Legal Department that they are inconsistent with Pueblo law. The Treasurer shall distribute each of its guidelines to the Governor, Tribal Council, and each Department at least ten business days prior to their intended effective date.

C. Interdepartmental Communications. When any decision or action is taken by any division of the Treasurer’s Office relating to a payment, purchase, reimbursement, travel or similar request from a Requesting Department, the Treasurer’s Office shall communicate the same to the Requesting Department via email. If a request is rejected, the notice shall include a reasonably detailed reason for the rejection so that the Requesting Department has the opportunity to correct deficiencies. This notice provision applies to, for instance:

- i. Rejection of a purchase requisition;
- ii. Rejection of an invoice – such notice shall include the date that the vendor may expect to receive such payment;

iii. Rejection of a reimbursement request – such notice shall include the date that the employee may expect to receive such reimbursement payment;

iv. Rejection of a travel request – such notice shall include an explanation as to whether such travel and/or registration fees have been booked directly by the Treasurer's Office and when the employee may expect to receive any reimbursement payments (i.e. for M&IE or gas expenses);

v. Professional licensure payment is rejected – such notice shall include proof of payment for the employee's records.

vi. Rejection of MIS hardware, software, equipment (computer, laptops, tablets, phones), subscriptions, etc.

D. Review. Whenever requested by the Governor or Tribal Council, but no less than annually, the Treasurer shall review and, if necessary, revise its forms, protocol, and internal controls to identify vulnerabilities, deficiencies, inefficiencies, and provisions that cause unreasonable delay. The Treasurer shall solicit and may consider feedback from all Department Directors during this review process. The Treasurer shall report on the outcome of any review to the Tribal Council and Governor promptly after conducting.

E. Audit. Immediately upon any materially adverse audit finding, the Treasurer shall determine whether its guidelines and/or this Code must be updated to account for vulnerabilities and/or inefficiencies, and shall report the same to the Governor and Tribal Council.

10-01-04. Definitions

The definitions enumerated in this subsection shall apply to the entirety of the Fiscal and Contracting Code.

A. Pueblo of Isleta or POI or the Pueblo, shall mean and include all governmental entities, including all departments, boards, commissions, and officials acting under official business for the Pueblo of Isleta, including the Isleta Health Center, but shall not include the Isleta Resort and Casino or C-Stores.

B. Authorized Funding Agreement means a Funding Agreement which is specifically authorized by Tribal Council action or deemed authorized under Section 02-03-01 D hereof.

C. Best Value shall mean the most advantageous combination of cost, quality, and sustainability to meet the Requesting Department's requirements.

D. Budget means Tribal Council approved funding allocation to each department for each fiscal year.

E. Budget Category means the Personnel, Operating Expense, and Capital Expense categories within a Department's budget and all of the Line Items properly listed within each such category under Generally Accepted Accounting Principles.

F. Budget Variance and/or Budget Modification means the adjustments and

modifications permitted to Budget Categories and line items within a Department's Budget under Subsection 02-03-01 C. during a Fiscal Year.

G. Capital Expenditure means any expenditure on real or personal, tangible and intangible property used in operations, above a cost of \$5,000, but shall not include routine maintenance to the same. The approval requirements for Capital Expenditures are addressed at Sections 02-02-03 B and 02-04-01 A of this Code.

H. Conflict of interest shall mean a financial or other interest or the appearance of impropriety relating to the relationship between an authorized contracting official or employee participating in the award or administration of a contract and selected vendor.

I. Contract means a legally binding document executed by all parties to a transaction or engagement prior to or in conjunction with the delivery of a good or service or prior to or in conjunction with commitment to applicable obligations agreed upon by the parties. For purposes of this Policy:

i. Contract Amendment and/or Contract Modification. A contract amendment, simply put, is a written modification or change made to an existing contract. It is a legal way to alter specific terms, conditions, or provisions without invalidating the entire original agreement.

ii. Purchase contract shall mean any contract under which POI purchases goods and/or services from a Vendor in exchange for monetary compensation to the Vendor. Purchase contracts shall include, but not be limited to professional service agreements, construction and construction management/inspection/service agreements, subscription agreements, agreements to purchase goods, and Purchase Orders for goods and services.

iii. Non-purchase contract shall mean a contract between POI and any other individual or entity under which POI agrees to certain obligations but does not purchase particular goods or services for monetary compensation paid to the Vendor. Non-purchase contracts shall include, but not be limited to: Memoranda of Understanding, Memoranda of Agreement, Cooperative Agreements, and Interjurisdictional Coordination Agreements.

iv. Funding Agreement shall mean any contract with another governmental entity or other third-party, including federal and state agencies, under which POI receives monetary support through grants, program funding, or other third-party funding sources.

v. Lease agreement shall mean any contract under which POI agrees to lease the use of land or facilities to or from another entity, regardless of whether such contract provides monetary compensation to POI or requires POI to pay rent to another party.

J. Department means any division of POI.

K. Emergency shall mean a sudden, unexpected turn of events not known during a budgeting period or a sufficient time period before their occurrence to permit an appropriation to be proposed and granted in the normal course of operations, where POI's delay in reacting

to the incident would be detrimental to the interests of the Pueblo and/or its members. This includes, but is not limited to: instances of natural disaster; unpredictable circumstances beyond the control of POI; instances where delay would jeopardize the funding for a project; instances where delay would materially increase project costs; instances where delay would pose a substantial risk to or undue hardship on the health, welfare, safety, or property of POI or Tribal members.

L. Executive Branch means the Pueblo's Governor and the Departments under his supervision and administration.

M. Expended shall mean that the funding has been remitted as payment according to the terms of the Council's appropriation or Funding Agreement's terms.

N. Fiscal Year shall depend upon the funding source for the expenditure. The POI fiscal year is from January 1st through December 31st. The federal fiscal year is from October 1st through September 30th. The State of New Mexico fiscal year is from July 1st through June 30th.

O. Funded Purchase Agreement means a Purchase Contract or Purchase Order for the acquisition of goods and/or services for which a Department has budgeted authority or a specific appropriation from the Tribal Council to fully cover the cost of purchase.

P. Intangible Property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Q. Large Purchase shall mean a purchase at the aggregate cost of more than \$250,000. Large Purchases require the Competitive Sealed Bid procurement method unless a Sole Source or other exception applies.

R. Legal Department (LD) Approved Form means a Contract template or specific Contract which is approved by the Legal Department as to legal form and consistency with this Code prior to its execution and use by a Department.

S. Legislative Branch shall mean Tribal Council who is charged with appropriations of Pueblo of Isleta funds for government operations.

T. Notice to Tribal Council means a written notice containing or accompanied by a separate written document containing all information required by this Code or any other directive of the Tribal Council which is delivered to Tribal Council staff and/or the Tribal Council Secretary as directed by the Tribal Council from time to time so that all Tribal Council members have notice and access to the contents of such notice.

U. Obligated shall mean that the funding is encumbered for a specific purpose by a budget or authorized through specific appropriation authorized by Tribal Council.

V. Micro-Purchase shall mean a purchase at the aggregate cost of \$50,000 or less, unless

the Treasurer decreases the Micro-Purchase threshold due to audit risk, in which case a Micro-Purchase shall mean a purchase at the aggregate cost determined by the Treasurer (not less than \$10,000). Micro-Purchase may use a Single and/or Sole Source Procurement method without any documentation justifying the Single and/or Sole Source.

W. Purchase Order shall mean a commercial document exchanged between the parties of a transaction for purposes of memorializing the terms of a purchase, which may or may not be formally executed by the parties.

X. Requesting Department shall mean the authorized decision-making unit initiating a purchase, requesting direction or advice, or proposing to engage in a transaction in accordance with this Code.

Y. Small Purchase shall mean a purchase at the aggregate cost of between \$50,001 and \$250,000, unless the Treasurer decreases the Micro-Purchase threshold due to audit risk, in which case a Small Purchase shall mean a purchase at the aggregate cost established by the Treasurer (not less than \$10,000) and \$250,000. Small Purchases require the Quick Bid procurement method unless a Sole Source exception applies.

Z. Subrecipient shall mean a non-federal and non-state person or entity that receives either federal or state funding from POI to carry out a state or federal grant or program in whole or in part. Unlike vendors, subrecipients: have programmatic decision-making responsibilities; are monitored by POI for performance consistent with the objectives of the federal or state funding program; determine who is eligible to receive federal or state assistance under the program; retains some element of programmatic control and discretion or otherwise manages substantive programmatic work using the federal or state funding.

AA. Sole Source shall mean to transact with one selected vendor without considering multiple competitive bids or quotes.

BB. Vendor shall mean the person or entity selling goods or services to POI.

i. Suspended Vendor - a company or individual that is temporarily disqualified from participating in federal government contracting and subcontracting. Suspensions are usually a preliminary action taken while an investigation, audit, or review is underway. The suspension may continue until the legal or debarment proceedings are complete. A suspension is effective immediately. A suspension is a temporary exclusion action which lasts until the conclusion of the criminal or administrative proceedings upon which the action is based, or for 12 months or 18 months if the prosecuting official justifies an extension in writing.

ii. Debarment, which is an exclusion from federal contracting for a specified period of time. Debarments are usually for a set period of time, typically three years. If circumstances warrant, the debarring official may impose a longer period of debarment. The length of the debarment exclusion is decided based on the circumstances and factors relevant to each party, and the length will begin counting at the date of any initial suspension exclusion.

10-02

PURCHASING POLICIES AND STANDARDS

10-02-01. General Provisions

A. Purpose. The purpose of these Purchasing Policies and Standards is to ensure that public funds are expended lawfully and appropriately; ensure that the Pueblo of Isleta's (POI or Pueblo) relationships and transactions with external parties, including state entities, federal entities, local entities, non-profit organizations, other Tribes, and vendors aligns with the policies and priorities of the Pueblo's elected leadership; assure that POI purchasing actions are in full compliance with applicable Federal, State, and Tribal law and regulations; provide for the fair and equitable treatment of all persons or firms involved in purchasing by POI; assure that purchases of goods, services and construction are procured efficiently, effectively, and at the most favorable prices available to POI; promote full and open competition in contracting; and provide safeguards for maintaining a procurement system of quality and integrity.

B. Scope. This Policy shall apply to all purchases by POI.

C. Funding Agreement Terms Shall Control. To the extent this Code or POI practice conflicts with the terms of any Authorized Funding Agreement, POI accepted gift, or bequest, or with any law, rule, policy, or regulation applicable to such funding agreement, gift, or bequest, the specific funding terms, including the entirety of 2 CFR Part 200 if applicable, shall override this policy and shall apply to and control such transaction. To the extent this policy conflicts with the terms of a specific appropriation or resolution by Tribal Council, the specific appropriation or resolution shall apply to and control such a transaction.

D. Confidential Nature of Records. All documents and information relating to a contract or purchase, including bid documents, bid evaluations and scoring tabulations, correspondence, drafts, and invoices shall be considered confidential proprietary information of POI and shall generally not be made available to the public, except in any of the following circumstances:

- i. Documents or information explicitly required to be a matter of public record according to applicable funding agreement terms;
- ii. Documents or information explicitly required to be a matter of public record by Tribal law;
- iii. Documents or information explicitly authorized for publication by the Governor or Tribal Council;
- iv. Documents or information which the POI Legal Department deems necessary to disclose in order to advance or resolve a corollary transaction, dispute, litigation, or some other legitimate public interest.

E. No Rights Conferred on Third Parties. The purpose of this policy is to benefit the Pueblo of Isleta and its Tribal Members by protecting public funds from improper use and ensuring that expenditures are favorable to POI. It is not the purpose of this policy to confer any protections,

rights, or privileges on Vendors, bidders/proposers or potential Vendors. Nothing in this policy shall be construed to entitle any bidders, prospective bidders, Vendors, or prospective vendors to any right or procedure for protests, disputes, or claims, unless explicitly authorized herein or specific bid/proposal requests of invitations. This policy does not entitle bidders, prospective bidders, Vendors, or prospective vendors to any notice, record, or information relating to contracts awarded, unsuccessful bids, bid evaluations or score tabulations, or procurement methods, justifications, or outcomes.

F. General Procurement Standards. For every purchase by the Pueblo of Isleta, the Requesting Department and the Procurement Division shall apply the following standards:

i. No duplicative or unnecessary purchases. POI shall avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

ii. Preference for in-house resources. Prior to engaging any consultant or professional services provider, the Requesting Department must first determine that in-house resources are inadequate and that the cost of a contractor is justified, given personnel or other resource limitations.

iii. Value engineering. POI is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

iv. Adequate budget. Prior to entering into a transaction, the Treasurer shall ensure that there are sufficient unencumbered funds budgeted, appropriated or otherwise authorized by Tribal Council for such transaction and available to cover the anticipated cost.

v. Fiscal responsibility. Purchasing decisions by Requesting Departments, the Treasurer, and the Governor shall always be made with consideration of POI's fiscal duty to its Tribal members. In general, the following practices shall be avoided in order to meet POI's fiscal duties:

1. Organizational conflicts of interest, as well as conflicts of interest involving government officials or employees or their immediate family members or household members;
2. Arbitrary or capricious purchasing decisions;
3. Non-competitive pricing practices between affiliated vendors or bidders;
4. Unnecessary bidder requirements or excessive bonding as a means to unreasonably restrict competition;

5. Offering an unfair or unreasonable competitive advantage to any vendors;
6. Solicitation or acceptance by any POI officials, employees, agents, or representatives of any gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts;
7. Any unlawful discrimination against any individual or entity in the award of contracts, subcontracts, or purchase orders;
8. Awarding contracts to persons or entities that developed or drafted specifications, requirements, statements of work, invitations for bids, or requests for proposals.

vi. Review authority. The Procurement Director, Treasurer, and Legal Department are each authorized to question the quality, quantity, and kind of material requested, as well as the solicitation method, procurement method, and due diligence review method requested or used by any Requesting Department and any relevant records for purposes of investigating violations of law or policy and instances of suspected fraud, waste, or abuse.

vii. Self-Certification. Adoption of this policy shall constitute self-certification by POI that its procurement systems generally comply with 2 CFR Part 200.

G. Ethics of Government Administration Applicable to Procurement.

i. The ethical conduct of all POI employees and officials in any purchase is essential to developing and maintaining the Pueblo's business reputation and operational consistency.

ii. In any purchase, POI employees and officials must:

1. Consider the interests of POI in all transactions;
2. Carry out established policies;
3. Work for honesty and truth in buying, to buy without prejudice, and avoid all forms of commercial bribery;
4. Avoid any impropriety or appearance of impropriety;
5. Avoid a conflict of interest;
6. Interact and deal with vendors in a spirit of fairness, integrity, promptness, and courtesy;
7. Choose Vendors impartially;
8. Choose Vendors on the basis of the vendor's price, service, quality, delivery and integrity;

9. Encourage Vendors to discuss well-conceived ideas that promote progress in quality, lower costs and improved service as long as they comply with the procurement guidelines;

10. Act in good faith at all times;

11. Decline gratuities, gifts or other consideration from any current, past, or potential Vendor without reporting the same in writing to the Treasurer. If the Vendor offers to provide the Pueblo any gratuities, gifts or consideration rather than an individual employee, the Treasurer in consultation with the Legal Department will decide on the propriety of POI receiving item and how the item shall be disposed of. If the Treasurer determines that acceptance of the item may create the appearance of impropriety, the item will be returned to the Vendor.

a. For purposes of this subsection, the following shall not be considered “gratuities, gifts, or other consideration:”

i. Printed informational, educational or promotional material;

ii. A gift that is not used; and, no later than thirty days after receipt, is returned to the donor or delivered to a charitable organization and is not claimed as a charitable contribution for federal income tax purposes.

iii. A gift, device or inheritance from any of the following, if the donor is not acting as the agent or intermediary for someone other than a person covered by this subparagraph:

1. An individual's spouse;

2. An individual's child, parent, grandparent, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin;

3. The spouse of any individual listed in subdivision (2) of this subparagraph;

4. Any person, including an organization, which has a bona fide social or private business relationship with the individual, where the circumstances demonstrate that the motivation for the gift arises out of that relationship and not from the recipient's holding of public office or employment. For the purposes of this subdivision, relevant circumstances include but are not limited to the source of funds used by the donor to acquire the gift;

iv. Any item of nominal value;

v. A certificate, commemorative token or item, or plaque;

- vi. Food and beverage with a value of less than \$50;
- vii. Compensation, per diem or other payments or benefits which the public official, public member or public employee receives in the performance of services for the governmental entity;
- viii. Any loan, gift, gratuity, special discount or hospitality generally available to a segment of the population and is not specifically extended to the individual due to their employment with POI;
- ix. Travel, registration and lodging for any conference or meeting while attending in his official capacity as a public official, public member or public employee.

10-02-02. Procurement Methods

A. The Tribal Council has determined that it is in the best interests of health, safety, welfare, and property of the Pueblo of Isleta and its Tribal members to hinge allowable procurement methods on the aggregate purchase price. Doing so under the thresholds described herein is an appropriate means to avoid risk or improper purchases, in consideration of the Treasurer's applicable internal controls, while also ensuring that Departments are able to effectively and efficiently deliver the services to which the Isleta public is entitled.

B. The aggregate purchase price determines the applicable procurement standards. However, nothing herein prevents a Requesting Department from implementing stricter competitive procurement processes for purchases falling under the applicable threshold. Departments are bound to engage in due diligence in evaluating every purchase authorized, not just those requiring competitive bidding.

C. Micro-Purchase. Purchases for which the aggregate amount does not exceed \$50,000 shall be considered Micro-Purchases. The following single/sole-source procurement method shall apply to Micro-Purchases:

- i. Micro-Purchases may be awarded without soliciting competitive quotes or bids. POI may Single or Sole Source these purchases without any additional supporting documentation.

- ii. In requesting a Micro-Purchase, the Department Director asserts and self-certifies that it has engaged in due diligence in seeking the best value purchase for POI.

- iii. Micro-Purchase Threshold Subject to Decrease. The Micro-Purchase threshold of \$50,000 shall only apply during periods in which POI qualifies as a low-risk auditee for the most recent audit, as defined by 2 C.F.R. 520. If the Treasurer determines that POI no longer qualifies as a low-risk auditee, the Treasurer may decrease Micro-Purchase threshold to not less than \$10,000, with purchases between the new threshold and \$50,000 requiring Quick Bid Procurement. The Treasurer shall provide written notice of its determination and the decrease to the Micro-Purchase threshold to the Governor,

Tribal Council, and all Department Directors.

D. Small Purchases. Purchases greater than \$50,000 but less than \$250,000 are considered Small Purchases. The following Quick Bid Procurement method shall apply to Small Purchases:

i. Unless a Sole Source exception applies, the Requesting Department shall seek quotes or prices from at least three sources. Written solicitations, whether by mail or electronic, are acceptable.

ii. The Requesting Department shall document:

1. That the Requesting Department provided each Vendor with information as to the specific item/service being procured, the time by which quotations must be submitted, and the information required to be submitted with each quotation;

2. The specific Vendors from which quotes were sought, including their names, addresses, telephone numbers, and the date of contact;

3. A brief explanation of each Vendor's qualifications;

4. The quotes presented by each Vendor;

5. The Requesting Department's selected Vendor with an explanation as to why such Vendor is preferred, unless the lowest-price is selected, in which case no additional explanation shall be necessary.

iii. The Requesting Department shall document its selected Vendor for approval by the assigned Procurement Buyer.

E. Large Purchases. Purchases greater than \$250,000 are considered Large Purchases. The following Competitive Sealed Bid or Competitive Proposal procurement methods shall apply to Large Purchases:

i. Bids must be publicly solicited through publication in a newspaper with statewide circulation, as well as to suppliers deemed qualified by the Requesting Department, at least 10 business days prior to the close of the Pueblo's acceptance of bids.

ii. Solicitations must include:

1. Project Scope and Requirements. The solicitation document should provide a clear and comprehensive description of the project, its objectives, scope, and requirements. This section should include all relevant details such as the project timeline, milestones, deliverables, and any technical specifications. Project scope descriptions may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, set forth the minimum essential characteristics and standards to which it must conform to satisfy its intended use. Use of brand names in project descriptions should be avoided, if feasible. However, a "brand name or equivalent" description may be

used as a means to define the performance or other important requirements when it is impractical or uneconomical to make a clear and accurate description of the technical requirements.

2. Eligibility Criteria. The eligibility criteria should clearly state the requirements that potential bidders/proposers must meet in order to participate in the bidding/proposal process. This may include the bidder's/proposer's financial stability, relevant experience, technical capabilities, and any required certifications or licenses.

3. Evaluation Criteria. The solicitation document should clearly state the evaluation criteria that will be used to assess the bids/proposals. This may include factors such as the bidder's/proposer's past performance, technical approach, cost, and any other relevant considerations.

4. Bid Submission Requirements. The solicitation document should outline the requirements for submitting a bid/proposal, including the deadline for submission, the format and content of the bid/proposal, and any other relevant instructions.

5. Purchase Contract Terms and Conditions. The solicitation document should include the proposed terms and conditions of the Purchase Contract, including the payment terms, warranties, indemnification, and any other legal and regulatory requirements.

6. Clarification and Questions. The solicitation document should provide a mechanism for potential bidders/proposers to ask questions or seek clarification about the requirements for the bidding/proposal process. Responses to such questions shall be provided to all bidders/proposers.

7. Project Budget. The solicitation document must provide the budget for the expenditure, as reasonably estimated by the Requesting Department. The Requesting Department may reasonably estimate its project budget by considering costs of similar projects, aggregating likely costs of project components, and assessing market prices of similar commercial products or services.

iii. Negotiating or Correcting Bids or Proposals

1. The Requesting Department may, at its discretion, engage in negotiations with proposers who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the solicitation, or potentially low bidders.

2. The purpose of negotiations shall be to seek clarification with regard to

and to advise proposers or bidders of the deficiencies in both the technical and price aspects of their proposals/bids so as to assure full understanding of and conformance to the solicitation requirements.

3. Upon completion of negotiations, a request for best and final proposal or bid will be given to all proposers/bidders with whom negotiations were conducted. A common deadline shall be established for receipt of proposal/bid revisions based on negotiations.

4. Correction or withdrawal of inadvertently erroneous proposals or bids may be permitted, at the discretion of the Requesting Department, if the proposer/bidder can show that a mistake was made, the nature of the mistake, and the proposal/bid price actually intended.

iv. Solicitation Cancellation. A solicitation may be canceled by POI at any time and for any reason at the discretion of the Requesting Department or Procurement Director.

v. Evaluating Bids/Proposals. The Procurement Division will be facilitating all proposals and bids. The Procurement Division is present to ensure equitable opportunity is applied consistently.

1. The Procurement Division shall exclude from evaluation any bids/proposals from Disapproved Vendors who are identified to be debarred or suspended, contractors, whether such Vendor was listed on POI's Disapproved Vendors List by POI or debarment or suspension was issued by a federal entity or state entity.

2. The Requesting Department shall evaluate bids and select the preferred Vendor.

3. The Requesting Department may either evaluate the written bids exclusively or invite bidders/proposers to interview, in which case both the written bids/proposals and interview content should be evaluated.

4. In evaluating bids, the Requesting Department shall consider the following criteria in such order of priority as may be established by the Requesting Department after consultation with Assigned Procurement Buyers, the Procurement Director, and as needed, the Legal Department:

- a. Indian Preference;
- b. Bidder qualifications;
- c. Bid value;

- d. Price;
- e. Timeliness of proposed completion date;
- f. Bidder's protest of any standard POI Purchase Contract terms;
- g. Outcome of reference checks on past similar work;
- h. Personnel qualifications and capacity, including specific expertise of management;
- i. Assessment of the Vendor's experience rating;
- j. Assessment of the Vendor's bonding capacity;
- k. Litigation/dispute history;
- l. Debarment/ Disapproved Vendor history.

5. The Requesting Department shall document its bid evaluations and its selected Vendor.

vi. Notice to bidders stating whether such bidder was selected or not shall be provided by the Procurement Division. Justification may be provided but shall not be required in such notice.

F. Sole Source Exceptions. If any of the following circumstances apply, regardless of the purchase price, the Requesting Department may forego the otherwise applicable procurement methodology and transact with one vendor without first seeking competitive bids or quotes:

- i. Unique. The item or service is only available from a single source, either because of the unique nature of the item or service itself or because the designated vendor is specialized or uniquely qualified to effectively perform under the contract.
- ii. Emergency. Emergency or urgent circumstances render competition unfeasible, as the delay that would be created by competitive procurement would be adverse to the public interest.
- iii. Failed Solicitation. Competitive solicitation was attempted but resulted in either one or no adequate bids.
- iv. Legal Counsel or Litigation Services. The Vendor is retained to provide either legal services generally or to provide services specific to pending or active litigation, such as expert witness services.

v. Best Value. The Requesting Department determines that one Vendor provides the best value, as compared to other Vendors, and that obtaining additional quotes through either the Quick Bid procurement method or through the Competitive Sealed Bid procurement method will result in a higher cost to POI. This exception is limited to purchases with a per-unit cost of less than \$10,000, regardless of the total aggregate cost of the purchase.

vi. Cooperative Purchase Agreements. The preferred vendor and pricing have already been vetted by the U.S. General Services Administration under the Federal Supply Schedule or the Multiple Award Schedule, or by the State of New Mexico Purchasing Division under Statewide Price Agreements through the General Services Division, or by a non-governmental cooperative purchasing clearinghouse approved by the Treasurer, including but not limited to Cooperative Educational Services.

vii. Competition is not feasible. Documented justification by official memo on letterhead by either the Governor or Tribal Council that a reasonable determination has been made that competition is not feasible for the specific transaction.

viii. Preferred vendor. The Vendor is included in the POI Treasurer's most recent Approved Vendor List, based on the Vendor's past performance on POI contracts.

10-02-03. Purchase Contracts

A. Purchases requiring contracts. Purchases with any of the following qualities must be made through a Purchase Contract, along with a Purchase Order:

- i. Any purchase of consulting services or services of expert or legal advisors;
- ii. Any purchase of \$100,000 or more;
- iii. Any purchase requiring an express or customized warranty;
- iv. Any construction purchase requiring inspection prior to acceptance;
- v. Any purchase for which signature must be directly authorized by the Tribal Council under subsection (B) below;
- vi. Any purchase which the Requesting Department, in its discretion, deems should be made through a Purchase Contract;
- vii. Any purchase which the Treasurer, in his/her discretion, deems should be made through a Purchase Contract.

B. Contracting Official.

i. General. The authority to negotiate and enter into all contracts, leases and other agreements binding on the Pueblo is granted to and vested in the Tribal Council by the Pueblo's Constitution with the Governor being the binding official. The Tribal Council may exercise the contracting authority (a) directly, (b) by delegation to the Governor,

Department Directors, Executive Branch staff, or other specified persons by Resolution or duly adopted motion, or (c) by delegation to the Governor and Executive Branch pursuant to this Code, subject to the conditions and limitations stated herein.

ii. Funded Purchase Contracts and Purchase Orders. The Tribal Council hereby delegates to the Governor, Department Directors and their designees within the Executive Branch authority to negotiate and execute Funded Purchase Contracts and Funded Purchase Orders, subject to the requirements and limitations of Subsections D and E of this Section, and provided that (a) any Funded Purchase Contract or Funded Purchase Order requiring payment by POI of more than \$250,000 shall be executed on behalf of the Pueblo by the Governor, or a Lt. Governor in his absence or by his delegation, the Purchase Order must be signed by the Treasurer, and (b) any Purchase Contract or Purchase Order containing a waiver of the Pueblo's sovereign immunity or consent to the jurisdiction of any court or governmental agency other than the Pueblo's Tribal Court or governmental agencies shall require specific and express approval and authorization by Tribal Council Resolution or duly enacted motion.

iii. Authorized Funding Agreements. The Governor, or authorized designees within the Executive Branch are authorized to execute all Authorized Funding Agreements, by delegation of authority and as described at Subsection 02-03-01 D hereof, subject to the requirements and limitations of Subsections D and E of this Section, and provided that any Authorized Funding Agreements containing a waiver of the Pueblo's sovereign immunity or consent to the jurisdiction of any court or governmental agency other than the Pueblo's Tribal Court or governmental agencies shall require specific and express approval and authorization by Tribal Council Resolution or duly enacted motion.

C. Purchase Contract Types. A Requesting Department may elect to enter into one of the following contract types.

i. Fixed Rate Deliverable Contract. A fixed rate deliverable contract is one in which the price or rate for goods or services is predetermined and remains unchanged throughout the duration of contract, with compensation due upon the Vendor's completion of a specified portion not in excess of the percentage of contract obligations then completed or all contract obligations. Fixed rate deliverable contracts are generally preferred by POI.

ii. Fixed Rate Hourly Contract. A fixed rate hourly contract is one in which the rate for the Vendor's services is predetermined on an hourly basis. All fixed rate hourly contracts must include a maximum contract price.

iii. Cost Reimbursement Contract. A cost reimbursement contract, also referred to as a "time and material" contract, is a type of contract where the contractor is reimbursed for the actual costs incurred during the performance of the contract, plus an additional fee or profit. In this type of contract, the contractor is usually responsible for managing the costs of the project, and the buyer agrees to pay the contractor for all allowable, allocable, and reasonable costs incurred during the performance of the contract. Cost reimbursement contracts are commonly used in situations where the scope of work or project

requirements are unclear, or where the buyer requires a high level of flexibility in the contract because the project is complex and the total cost and scope of work is difficult to predict or estimate.

1. A cost reimbursement contract may be used if the Requesting Department makes the reasonable determination that it is likely to be less costly than another contract type or that another contract type is impracticable to satisfy the POI's needs.

2. For any cost reimbursement contract, the Requesting Department shall be required to routinely meet with the vendor, manage and monitor costs, and to closely supervise the vendor's compliance with contract requirements.

D. Mandatory terms for Purchase Contracts. Absent express authorization from the (a) Tribal Council or (b) Governor or other Executive Branch authorized contracting official upon advisement by the Legal Department, terms protecting each of the following interests of POI must be included in all Purchase Contracts over the micro-purchase threshold:

- i. Contract term (i.e. no indefinite or permanent contracts);
- ii. For construction contracts greater than \$150,000, a performance bond by the contractor for 100% of the contract price to secure fulfillment of all of the contractor's obligations under such contract;
- iii. Preservation of the Tribe's sovereign immunity unless a limited waiver is authorized by the Tribal Council;
- iv. Applicability of Tribal law in interpreting contract provisions;
- v. Indemnification and insurance clauses that protect POI's assets from claims by third parties;
- vi. Either maintaining jurisdiction over disputes in and with the Pueblo of Isleta Tribal Court, or assigning dispute resolution to non-binding mediation, or assigning dispute resolution to a "court of competent jurisdiction";
- vii. Enforcement mechanisms entitling POI to return of consideration or damages in the event of contractor non-performance;
- viii. Termination clause allowing POI to terminate, without such termination constituting a breach, upon reasonable notice to the contractor made in writing at least ten days prior to the termination date, in the event of an of the following:
 1. Funding shortfall, as determined by either Tribal Council or by any relevant state or federal funding agency;
 2. Reasonable determination by POI that the contractor's performance is deficient or otherwise non-compliant with the contract;

3. Directive of the Governor that termination is in the best interests of POI;
or

4. Directive of the Tribal Council that termination is in the best interest of the health, safety, welfare, or property of the Pueblo.

ix. Preservation of POI's ownership rights and interests to any work product created pursuant to the contract;

x. Records retention requirements for financial records for at least three years following final payment;

xi. Audit compliance requirements, to apply even after the Contract's expiration or termination, such that the Contractor must share any records relevant to an audit or internal review with POI, its auditors, funding agencies and their regulators, the U.S. Comptroller General, or any other person or entity authorized by law or by POI to make such request.

E. Legal Review. All Purchase Contracts over the micro-purchase threshold must be reviewed and approved by the Legal Department prior to execution by the authorized contracting official, unless the assigned Procurement Buyer and/or Procurement Director certifies that the Requesting Department did not deviate from the boilerplate language of an LD Approved Form of contract template applicable to the transaction. All Purchase Contracts over the micro-purchase threshold must include a signature from either:

i. The Legal Department, certifying that the contract is approved as to form and for legal sufficiency; or

ii. The Procurement Director, certifying that the Requesting Department did not deviate from the boilerplate language of the LD Approved Form of contract template applicable to the transaction.

F. Grants & Contracts Review. All Purchase Contracts using federal or state grant funding must be reviewed and approved by the Treasurer's Grants & Contracts Division prior to execution by the authorized contracting official to verify compliance with applicable grant terms and agreements.

G. Contract, Funding Agreement, and Subrecipient Monitoring and Management.

i. Purchase Contracts and Purchase Orders. The Department through or for whom a Purchase Contract and/or Purchase Orders is entered into or placed shall (a) regularly monitor Vendor performance; (b) assess whether the quantity, quality, and timeliness or the goods or services contracted for and provided by the Vendor meet the Purchase Contract or Purchase Order terms and specifications; (c) report to Procurement any issues or deficiencies in Vendor performance; and (d) take such action as necessary to enforce the Purchase Contract or Purchase Order, including the referral of significant performance issues to Procurement and the Legal Department.

ii. Funding Agreements. The Department whose activities and programs are supported by a Funding Agreement shall continually monitor its performance under the Funding Agreement's terms and consult and cooperate with the Treasurer's Grants & Contracts Division to ensure the terms and requirements of the Funding Agreement are complied with and met.

iii. Subrecipients. The Department with respect to whose activities and programs a Subrecipient agreement or arrangement is entered into, and the Treasurer's Grants & Contracts Division, shall monitor Subrecipient performance and use of funds to ensure grant requirements are met and the Pueblo's objectives with respect to the Sub recipient relationship are achieved.

10-02-04. Approved and Disapproved Vendor Lists – Maintenance Revision & Use

A. Debarment is the process by which POI excludes or prohibits individuals, entities, or contractors from doing business with the Tribe due to a failure to perform according to contract obligations, non-compliance with applicable law, unethical practices, misconduct, or otherwise acting contrary to the best interest of the Pueblo of Isleta and its tribal members. The Approved and Disapproved Vendor Lists shall be updated annually.

B. Ineligibility for Purchase. No transactions shall be made with any debarred or suspended vendors, including vendors debarred or suspended by a federal entity, state entity or by POI.

C. Grounds. Debarment may be imposed on any individual, entity, or contractor that has engaged in any of the following conduct:

- i. Fraudulent practices;
- ii. Misrepresentation of facts or qualifications;
- iii. Failure to meet contractual obligations;
- iv. Unethical or immoral behavior;
- v. Criminal conduct;
- vi. Non-compliance with tribal laws, policies or regulations; and/or
- vii. Any other conduct that is deemed harmful to the best interests of the tribe.

D. The Procurement Director may place a Vendor on the Disapproved Vendor List for any of the following reasons:

- i. Failure to substantially perform a contract with the Pueblo in a satisfactory and timely manner on at least one occasion, or in any material manner on multiple occasions;
- ii. Non-compliance with any applicable federal state or tribal law;
- iii. Fraudulent and/or unethical practices;
- iv. Misconduct, including misrepresentation; and/or

- v. Otherwise acting contrary to the interest of the Pueblo and its Members.

The Procurement Director may consider the debarment or disqualification of the Vendor by another jurisdiction, but shall not be bound by that determination except as mandated by applicable Funding Agreement or law.

E. The Procurement Director may consider placing a Vendor on the Disapproved Vendor List based upon information provided by a Department Director or other Executive Branch purchasing personnel or the Purchasing Director's own knowledge and observation of the conduct and performance of the subject Vendor. The Purchasing Director shall conduct such investigation of the relevant facts and circumstance as may be necessary or appropriate to assure him or herself that there is a reasonable and significant basis for placing the Vendor on the Disapproved Vendor List. Actual placement of a Vendor on the Disapproved Vendor List shall require concurrence and approval by the Treasurer following review of the information compiled by and any finding(s) of any investigation conducted by the Procurement Director. The Treasurer may undertake such additional fact checking and investigation as he or she determines necessary and appropriate before concurring in and approving the placement of a Vendor on the Disapproved Vendor List.

F. Notice of the placement of a Vendor on the Disapproved Vendor List shall be provided to the Governor and the Tribal Council within ten (10) days of such action. The Governor and Tribal Council may review the basis of placement of a Vendor on the Disapproved Vendor List and conduct such informal investigation as they determine appropriate, although no formal procedures shall be required or may be relied upon by the Vendor as provided at Section 02-02-01.

G. Either the Governor or Tribal Council may instruct the Treasurer and Procurement Director to remove a Vendor from the Disapproved Vendor List for any reason they determine justified and sufficient. In the event of any disagreement between the Governor and Tribal Council regarding the placement of a Vendor on the Disapproved Vendor List, as the Branch empowered to negotiate and enter into contracts under Article V, Section 2(c) of the Pueblo's Constitution, the decision of the Tribal Council shall control.

H. Upon inquiry from another federal, state or tribal government unit, or any other firm or person, regarding the Pueblo's experience or relationship with a Vendor listed on the Disapproved Vendors List, the Procurement Director and Executive Branch personnel receiving such inquiry may respond that the Vendor has been placed on the Pueblo's Disapproved Vendors List, but shall not supply any further information without consultation with the Legal Department and subject to the Legal Department's advice.

I. The Procurement Director may consider removing a Vendor from the Disapproved Vendor List at any time after the first anniversary of the placement of the Vendor on the List, if it then appears that the reason(s) for the original placement of the Vendor on the Disapproved Vendor List have been resolved and the Vendor may be expected to satisfactorily perform any Purchase Contract or Purchase Order with the Pueblo. Removal of a Vendor from the Disapproved Vendor List shall require the concurrence and approval of the Treasurer and may

be reversed by either the Governor or Tribal Council following their notification of such action.

J. Nothing in this provision regarding Approved and Disapproved Vendor Lists shall be construed as a waiver of the Pueblo's sovereign immunity from:

- i. Any lawsuit for damages;
- ii. Any judgment for damages;
- iii. Any suit in any forum other than an appeal before the Isleta Tribal Court or Isleta Appellate Court.

10-03

BUDGET AND PURCHASE AUTHORITIES, VARIANCES AND MODIFICATIONS, AND REVERSIONS

10-03-01. Budget and Purchase Authorities

A. Budget and purchase authorities generally. All budget and purchasing authority is derived from and subject to the Pueblo of Isleta Constitution. The Tribal Council has sole authority to appropriate funding under Article V, Section 2(i). of the Pueblo's Constitution through (1) approval of each Department's fiscal year budget, (2) specific appropriations(s), and/or (3) through delegation, pursuant to Subsection D of this Section, of contracting authority to enter into grant and other Authorized Funding Agreements with other governments and parties. The Tribal Council may delegate its authority to the Governor, POI Departments, and the Treasury by the terms of this Code or specific delegation by Resolution or duly adopted Council motion.

B. Lease Agreements. Tribal Council has sole Constitutional authority to approve lease agreements under Article V, Section 2(b) of the Pueblo's Constitution. The Tribal Council may exercise such power directly or by delegation to the Governor or other Executive Branch personnel through this Code or specific Council action.

C. Budgeting Funds. Tribal Council has sole authority, under Article V, Section 2(i) of the Pueblo's Constitution, to appropriate POI funds received by POI regardless of source, including grants and programmatic Funding Agreements, which it shall do (1) through regular budget authorizations specific to each POI Department; (2) through specific appropriations; or (3) through delegation of authority to enter into grant and other Funding Agreements with governmental and other third-parties subject to the terms of this Code and such Funding Agreements. Revisions, changes, or redistributions to approved POI budgets, are at the discretion of the Treasurer. The Treasurer is the delegated authority to approve Budget Modifications without advance approval from the Tribal Council, including movement between Budget Categories excluding Wages and Benefits.

D. Authority to Settle Claims and Accept Fines, Restitution, Damages and Forfeitures.

- i. Under the advisement of the Legal Department, the Governor is authorized to approve and accept any settlement to resolve a claim, lawsuit, or dispute to which POI is a party, where (a) the resolution of such dispute does not require POI to expend funds and

(b) the amount at issue or recovered is not more than \$10,000, without first obtaining Tribal Council authorization.

ii. The Governor is authorized to approve and accept funds directed to POI by a state or federal court, including but not limited to funds ordered as restitution, fines, damages, or forfeiture, in order to resolve a dispute to which POI is not a party in any amount not exceeding \$10,000, without first obtaining Tribal Council authorization, under the advisement of the Legal Department.

iii. Any of the recoveries of funds described in i. and ii. above in excess of the amounts so stated requires specific Tribal Council approval.

E. Purchasing Approvals. Regardless of funding source, a request for purchase that is consistent with the Requesting Department's Tribal Council approved annual budget, or as otherwise appropriated by Tribal Council, must be approved as follows:

i. All purchase requests, regardless of price, shall require signature by two representatives of the Requesting Department, one of whom must be the director of the Requesting Department;

ii. Purchases greater than \$10,000 but less than \$250,000 shall also require approval of the Requesting Department Director and either the Governor or Treasurer;

iii. Purchases greater than \$250,000 will require approval of both the Governor and the Treasurer.

10-03-02. Governor's Spending and Administrative Oversight and Adjustment Authority, the Tribal Council Ultimate Budgetary Decision-Making Authority

A. Governor's Emergency Spending Authority. If the Governor determines that an immediate expenditure of funds is necessary to respond to an Emergency notwithstanding insufficient current budget/appropriation authority, the Governor may expend such funds as the Governor reasonably determines necessary to respond to the Emergency without prior Tribal Council approval or authorization. This exception shall apply to all purchases qualifying as an Emergency, regardless of price and regardless of the Requesting Department's budget. The Requesting Department and Governor shall adequately document the specific nature of the Emergency justifying any exception issued under this provision and shall provide the same to the Treasurer and Tribal Council.

i. After Hours Emergency. For those Emergencies occurring after normal working hours, on holidays, or on weekends, notification, documentation of the Governor's authorization and any other required documentation may be forwarded to the Treasurer with a copy to the Tribal Council on the next regular workday.

ii. Report to Council. Any authorization by the Governor to complete a transaction pursuant to this Emergency provision shall be reported by the Governor to Tribal Council as promptly as reasonably feasible and, in any event, prior to or during the next regularly

scheduled Tribal Council meeting.

iii. Tribal Council Modification or Recension. The Tribal Council may modify or rescind any expenditure authorized or directed for purposes of an Emergency, except to the extent that the Pueblo is legally committed to make any such expenditure as the result of the Governor's prior action under authority of this Section.

B. Override by Governor. The Governor may override any decision of the Procurement Director or Treasurer relating to any purchase contract or budget and may also override provisions of the Pueblo's Fiscal and Contracting code but only in the following limited circumstances.

i. Emergency. The Governor determines that an immediate transaction is necessary in an emergency; the requesting department and Governor shall adequately document the specific nature of the emergency justifying any exception issued under this provision and shall provide the same to the Treasurer.

ii. After Hours Emergency. For those emergencies occurring outside normal working hours, on holidays, or on weekends, notification, documentation of the Governor's authorization and any other required documentation.

iii. Report to Council. Any authorization by the Governor to complete a transaction pursuant to this emergency provision shall be reported to the Tribal Council in the next regularly scheduled Tribal Council meeting. The Treasurer shall be invited to such meeting.

C. Tribal Council Final Determination.

i. In the exercise of its budgeting and contracting authority under Article V, Sections 2. c. and i. of the Pueblo's Constitution, the Tribal Council may review, modify or rescind:

1. any decision or action of the Procurement Director or Treasurer under Section 02-03-01 C.; or

2. any decision or action of the Governor under Subsection B. 1 (b) of this Section 02-03-02.

10-03-03. Reversions

A. Unless otherwise expressly mandated or authorized by Tribal Council through the terms of any Budget approval or specific appropriation, or any specific authorization by resolution or duly adopted motion, any unspent appropriations made by Tribal Council as part of the routine annual budgeting process shall revert back to the POI account from which such funds were appropriated at the close of the fiscal year.

B. Any unspent appropriations made by Tribal Council outside of the routine annual budgeting process, such as project-specific appropriations, shall revert back to the POI

account from which such funds were appropriated at the close of two years after such appropriation unless otherwise authorized by the Tribal Council.

10-04

CAPITAL EXPENDITURES, TRAVEL, LICENSURE, REIMBURSEMENTS, SUBSCRIPTIONS, BLANKET PURCHASE ORDERS

10-04-01. Capital Expenditures

A. For purposes of determining the level of budget authorization required for a capital expenditure, the following thresholds shall apply. Capital expenditures at or below the following thresholds shall require approval by the Treasurer, who shall determine whether purchase is consistent with the Requesting Departments' budget as appropriated by the Tribal Council. Capital expenditures higher than the following thresholds shall require specific approval by Tribal Council.

- i. Art or items of cultural significance: \$10,000 or more.
- ii. Buildings: \$250,000 or more.
- iii. Building Improvements, but excluding routine improvements to buildings, which shall not be considered a capital expenditure: \$250,000 or more.
- iv. Equipment, including improvements to equipment but excluding routine maintenance to equipment, which shall not be considered a capital expenditure: \$50,000 or more.
- v. Infrastructure: \$250,000 or more.
- vi. Intangible Assets: \$100,000 or more.
- vii. Intellectual property / software: \$50,000 or more.
- viii. Land: all, regardless of value require Tribal Council approval.
- ix. Land Improvements, but excluding routine improvements to land: \$250,000 – or more.

B. For purposes of determining the level of budget authorization required for a capital expenditure, the value of the capital expenditure shall be considered the purchase price of each individual capital asset to be purchased, rather than the aggregate cost of such assets, except when purchased as a functioning group or system or integrated facility, or, for improvements, the total value of the asset to be improved.

C. For tax and depreciation purposes, the Treasurer shall set the threshold for capitalization of fixed-asset expenditures at \$10,000, regardless of the budget approval or procurement method used by POI to approve and make such expenditure.

D. For purposes of determining the approval level of budget authorization required for a capital expenditure, the Treasurer shall determine and publish guidance on the same how the value of the capital expenditure is to be calculated.

E. The Treasurer is authorized and directed to draft a set of written policies and procedures used to control POI's capital assets and demonstrate accountability. Such policies shall be referred to as the Capital Assets Management Policy and shall provide provisions for: tracking assets for accountability purposes; maintaining records for insurance purposes; ensuring assets are safeguarded from loss, waste, damage, or neglect; for compliance purposes such as when purchased with federal funds; and long-term capital budgeting and planning. Notice of the publication of such policies and procedures, including a copy thereof, shall be provided to the Tribal Council which may direct modifications or revisions as it determines appropriate.

10-04-02. Travel, Conferences, Licensure

“Employment-related travel” means any travel for meetings, presentations, professional development opportunities, or other off-site work in excess of 50 miles round trip from the employee's worksite. Employees on employment-related travel shall be eligible for per diem and mileage reimbursement pursuant to this policy. Regardless of the amount of expenditure, the Treasurer shall apply the following procedures to all purchases for travel, conference registrations, or licensure costs:

A. Travel. The Requesting Department must obtain authorization from the Governor for any travel request. The travel request shall describe the purpose, dates, and total costs of the proposed travel and include a conference agenda if available.

i. The travel request should be submitted before travel. If submitted after travel, the employee bears the risk of covering their own expenditures if the travel request is ultimately rejected. This provision does not cover non-employees, such as contractors, Governors or Council, Board or Committee members.

ii. The Requesting Department may elect for either the Procurement Division to use a credit card to book flights and hotels or for the employee on travel to cover their own expenses and to thereafter seek reimbursement.

iii. The following travel expenses are reimbursable:

1. The per-diem federal rate for all meals and incidental expenditures according to the M&IE schedule adopted by the U.S. General Services Administration for the fiscal year and location relevant to travel. The U.S. General Services Administration M&IE Schedule can be found at: <https://www.gsa.gov/travel/plan-book/per-diem-rates>. Alcohol is never a reimbursable meal or incidental expenditure expense.

2. The actual cost of airfare for general or economy class and costs of luggage. If traveler is seeking reimbursement, traveler must submit proof of lowest priced fare to be eligible for reimbursement.

3. For car travel, the federal mileage rate approved for the year by the U.S. Internal Revenue Service shall apply if a personal vehicle is used or the actual costs of rental and/or fuel if either a POI or rental vehicle is used. Employees must first use a POI vehicle, if available. Personal insurance costs shall not be reimbursable. There may be exceptions to circumstances. Treasurer has final approval for expenses related to any exceptions.

4. Transportation costs reasonably related to the travel, including costs for parking, car rental, taxis, and public transportation.

5. The federal lodging rate for the relevant destination and appropriate year, as adopted by the U.S. General Services Administration. The U.S. General Services Administration Lodging Rate Schedule can be found at: <https://www.gsa.gov/travel/plan-book/per-diem-rates>. If the conference or professional development training is offered at a place of lodging that exceeds the applicable Lodging Rate Schedule, the Procurement Director may, in their discretion, authorize the expense of such lodging.

B. Conference Registration. The Requesting Department must obtain authorization from the Governor for any request to attend a conference with registration or travel costs. The conference request shall describe the purpose, dates, and total costs. The submission of an agenda shall be required if it is published.

C. Professional Licensure. Governor authorization is not required for a Requesting Department to cover professional licensure costs, including costs of continuing education credits required for professional licensure, if such licensure is necessary for personnel to carry out their functions and duties for the Department, as long as such costs are otherwise consistent with the Department's budget. W-9s may be requested by POI from licensing bodies, but payment of licensure fees shall not be contingent on the licensing body's provision of a W-9.

10-04-03. Reimbursements

Regardless of the amount of expenditure, the Treasurer shall apply the following procedures to all reimbursement requests.

A. Purpose. Some types of small expenditures are ill-suited for the Treasurer's purchase requisition process, as exact costs are unknowable upfront and as purchases must be made as soon as the need arises and thus cannot wait for the Treasurer's purchase requisition process.

B. Eligible purchases. Subject to the limitations of this subsection, the following types of expenditures may be purchased by a Department Director with personal funds with such Director thereafter entitled to reimbursement from the Treasurer's Office if within Budget or a specific appropriation:

- i. Food/beverage for POI staff or contractors or to host meetings;
- ii. Purchases relating to events or meetings and hosting such events/meetings;
- iii. Urgently needed office supplies;

- iv. Travel costs consistent with the Travel subsection herein;
- v. Licensure costs, consistent with the professional licensure subsection herein, including for continuing education credits;
- vi. Any other expenditure that the Governor and/or Council specifically approves for reimbursement.

C. Limitations.

- i. Only Department Directors and division managers are eligible to seek reimbursement under this section.
- ii. Only individual expenditures less than \$250 and fiscal year expenditures less than \$1,500 in the aggregate are eligible for reimbursement under this section.
- iii. Like any other expenditure, an expenditure for which reimbursement is sought shall only be approved if it is consistent with the Department's Budget, as appropriated by Tribal Council, or an Authorized Funding Agreement, and consistent with any approval required by the relevant funding source.
- iv. In seeking payment through reimbursement rather than through a prior purchase requisition, the Department Director bears the risk of covering their own expenditures if the request is ultimately rejected.
- v. Departments shall be limited to using this reimbursement method for purchases a maximum of six times each fiscal year.

D. Documentation. All reimbursement requests must be accompanied by adequate supporting documentation evidencing the purchase (i.e. itemized receipt, description and purpose of purchase). However, no ratification form shall be required for reimbursement requests.

10-04-04. Subscriptions

Regardless of the amount of expenditure, the Treasurer shall apply the following procedures to all Subscriptions.

A. Purpose. Most subscriptions are not cost-effective if subjected to a term limit of one year. Upon entering into a subscription agreement, POI accepts the obligation to pay for the subscription for the term of the agreement. It is inefficient to require departments to submit purchase requisitions each year of such subscription.

B. Multi-year budget authorized. Subscriptions are the only type of purchase under the Pueblo's Fiscal and Contracting Code which may be made through a multi-year purchase requisition/purchase order.

C. Purchase requisitions. Upon evidence of a multi-year subscription agreement, the Treasurer's office shall accept and process a Requesting Department's purchase requisition for the entire period of that subscription and shall issue a purchase order for the same. Departments

are still responsible for including the annual subscription costs within their annual budget request.

D. Ratification. No ratification form shall be required by the Treasurer for any regular payment under a subscription agreement for which a purchase requisition has already been submitted.

10-04-05. Blanket Purchase Orders

For purchases likely to require multiple transactions from the same vendor over an extended period of time, blanket purchase orders are authorized so long as each purchase is in total within the Department's Budget. This promotes efficiency within the Treasurer's Office and Departments, as it eliminates the need for multiple purchase requisitions and should result in faster payment on invoicing. A blanket purchase order should not exceed one fiscal year unless explicitly authorized otherwise by the Tribal Council's Budget approval or specific appropriation. There is no expenditure threshold for blanket purchase orders. Rather, blanket purchase orders may be used whenever deemed reasonable to do so by the Requesting Department, as approved by the Treasurer.

10-04-06. Ratifications

A. Ratification Form. When a Requesting Department submits a direct payment request to the Accounting Department dated on or after the date of any relevant invoice or contract, the Accounting Department and/or Accounting Director may require the Requesting Department to submit a ratification form justifying the payment request.

B. Exceptions. Even when a Requesting Department submits a direct payment request to the Accounting Department dated on or after the date of any relevant invoice or contract, no ratification form shall be required for:

- i. Any regular payment under a subscription agreement for which a purchase requisition has already been submitted;
- ii. Reimbursements otherwise authorized under this Code, including reimbursement requests relating to travel, licensure, and conference registration costs.

10-05

DEPARTMENT ACCOUNTABILITY

10-05-01. Timelines

A. Expenditure deadlines. All appropriated POI funding must be expended within the same fiscal year that it is appropriated by the Tribal Council unless otherwise expressly authorized by the Tribal Council. Any funding that is not expended within the same fiscal year that it is appropriated shall be reverted to the Pueblo of Isleta community fund, unless the Tribal Council's original appropriation explicitly provides otherwise.

B. Treasurer deadlines. Unless not feasible due to staff shortages or other operational

challenges, the Treasurer's Office shall meet the following deadlines upon receipt of any request from a Requesting Department:

- i. Either accept such request as ready for processing or deny such request as incomplete, identifying all missing documents and information, within 5 business days;
- ii. Remit credit card payment on expenditure requests relating to travel, conference registration, or professional licensure within 5 business days of the request;
- iii. Issue eligible reimbursements within 15 business days of the request;
- iv. Remit payment on invoices for which purchase orders and invoices have been approved within 15 business days;
- v. Publish a solicitation within 15 business days;
- vi. Issue a determination on an exception request, including a request for sole source purchasing, within 10 business days, if applicable;
- vii. Issue a determination on a bid evaluation within 15 business days;
- viii. Draft a contract to begin negotiations with the select vendor within 15 business days.

C. Requesting Department deadlines. Unless not feasible due to staff shortages or other operational challenges, the Requesting Department shall meet the following deadlines upon receipt of applicable correspondence from the Procurement Division:

- i. Submit all missing documents and information requested by the Treasurer's Office within 5 business days;
- ii. Respond to edit-requests to solicitation and contract documents within 15 business days;
- iii. Within 15 business days of the close of a solicitation, score all bidders/proposers and select a preferred Vendor, unless an interview is deemed necessary, in which case all bidders/proposers shall be scored and a preferred Vendor selected within 30 business days of the solicitation's closure;
- iv. Within 5 business days of receipt of an invoice, either determine that such invoice must be disputed and advise the vendor of the same, or determine that such invoice must be paid and provided to Accounts Payable.

D. Legal Department deadlines. Unless not feasible due to staff shortages or other operational challenges, the Legal Department shall meet the following deadlines upon receipt of an applicable request from either the Requesting Department or Procurement Division:

- i. Either accept a request as ready for processing or deny such request as incomplete, identifying all missing documents and information, within 5 business days;
- ii. Advise as to the applicability of a sole source exception within 10 business days;
- iii. Propose edits to contract documents within 10 business days.

10-05-02. Interdepartmental Support

A. Treasurer's Office Duties. The Treasurer's Office shall routinely provide administrative support to Requesting Departments, to ensure that purchases and projects can be effectively and efficiently managed by each Department, including by:

i. Publishing Forms and Guidance. The Treasurer's Office shall publish all of its forms, protocol, and internal controls through the intranet. For each form, the Treasurer's Office shall include an instructional sheet advising as to the form's use and how to complete such form. The Treasurer's Office shall also publish guidance and manuals to educate Requesting Departments as to the Pueblo's Fiscal and Contracting Code.

ii. Training. As needed or at the request of the Governor or Tribal Council, but no less than every two years, the Treasurer's Office shall provide training to all Department Directors and administrative assistants on: the Pueblo's Fiscal and Contracting Code; all forms, protocol, and internal controls; the lifecycle of a purchase (from the initial request through final payment); procurement methods and their exceptions; and any other matter determined necessary or appropriate by the Treasurer or expressly requested by either the Governor or the Council. Absent exigent circumstances approved by the Governor, attendance by Department Directors and Department administrative assistants at such training shall be mandatory.

B. Legal Department Duties to the Treasurer as to Purchases and Contracting. The Legal Department shall provide legal support to the Treasurer's Office, including by:

i. Drafting contract templates appropriate for various purchases, including templates specifically for professional services agreements, professional engineering services, professional design services, and construction, and standard purchase order terms and conditions;

ii. As needed and at the request of the Governor or Tribal Council, but no less than annually, reviewing and, if deemed necessary, revising all contract templates to ensure proper protections for POI;

iii. At the request of either the Treasurer's Office Procurement Division or Requesting Departments, engaging in contract negotiations with Vendors on behalf of Requesting Departments;

iv. Reviewing and approving contracts as required under the Pueblo's Fiscal and Contracting Code;

v. At the request of the Treasurer's Office Procurement Division, advising as to POI compliance with applicable law of any purchase request, solicitation, bid evaluation, contract, or exception request, including laws or regulations specifically applicable pursuant to a non-POI funding source;

vi. At the request of the Treasurer's Office Grants & Contracts Division, advising as to POI compliance with applicable grant terms and funding agreements;

vii. At the request of the Treasurer's Office Grants & Contracts Division, reviewing

and advising on Funding Agreements with no deviation of purpose of the Terms and Conditions of the earmarked funds.

C. Interdepartmental coordination on Large Purchases.

i. Purpose. Regular meetings across relevant Departments and with the Governor's Office, Treasury Employees, and Legal Department will ensure that Departments are able to effectively and efficiently manage their Large Purchase projects.

ii. At the Governor's or Treasurer's request, directors of the following departments shall meet as needed, but no less than once per quarter, to discuss pending Large Purchases:

1. Treasurer's Office Procurement Division
2. Treasurer's Office Grants and Contracts Division
3. Treasurer's Office Finance Division
4. Treasurer's Office Financial Planning & Analysis Division
5. Legal Department
6. Design and Construction Department
7. Transportation Services
8. Public Works
9. Natural Resources Division
10. Any Other department required by either the Governor or Treasurer

10-05-03. Purchase and Budget Reporting Obligations

A. Purpose. The purpose of this subsection is to ensure that POI's elected leadership can exercise proper oversight over POI's high-cost projects and transactions.

B. The Treasurer shall provide yearly written and oral reports to the Governor and Tribal Council, no later than July 31, detailing the following information from the preceding year:

- i. Purchase requests greater than \$250,000 awaiting solicitation;
- ii. Purchase requests greater than \$250,000 presently out for solicitation;
- iii. Purchase requests greater than \$250,000 for which a Vendor has been selected;
- iv. Contracts executed for purchases greater than \$250,000;
- v. Sole source or other procurement exceptions approved for purchases greater than \$50,000;

- vi. Significant Budget Variance and Budget Modifications allowed under the terms of this Code;
 - vii. Requests or applications for federal or state funding authorized pursuant to this Code;
 - viii. Acceptance of material amounts of federal or state funding under the terms of this Code;
 - ix. Total value of consulting or professional services contracts entered into in the prior year, compared with average personnel costs of the Requesting Department;
 - x. Operational status of the Treasurer's Office and each of its divisions, including whether the Treasurer's Office has successfully met the timelines set out herein and whether staffing or other challenges are impeding the efficient and effective procurement of goods or services.
- C. The Legal Department may be invited to the Treasurer's oral report to Tribal Council.
- D. The Treasurer must be present at each yearly report but may exercise discretion in determining which divisions and personnel from within the Department is charged with presenting each report or portions thereof.

10-06 NON-PURCHASE CONTRACTS

10-06-01. Non-Purchase Contracts

- A. All agreements between POI and any other entity, whether federal, state, local, Tribal, or private, should be memorialized through contract if such agreements obligate POI and/or the other entity to certain conduct, coordination, or cooperation, even if such engagement does not involve any purchase of goods and services by POI.
- B. Such agreements may be memorialized through documents titled contracts, memoranda of understanding, memoranda of agreement, cooperative agreements, interjurisdictional agreements, or any other title deemed appropriate by the parties.
- C. All agreements under this Article shall be reviewed and approved as to legal form by the Legal Department prior to execution by the Governor, except for Agreements in previously Legal Department Approved Form templates.
- D. All Funding Agreements, including cooperative agreements, shall be reviewed and approved by the Treasurer's Grants & Contracts Division.
- E. Contracting official.

i. The authorized official empowered to enter into a binding Non-Purchase Contract, including Funding Agreements, on behalf of POI is dependent upon the following factors:

1. Non-Purchase Contracts that are two years or shorter, when considering all amendments and extensions, require authorization by the Governor but do not require explicit review or approval by the Tribal Council.

2. Non-Purchase Contracts that are longer than two years, when considering all amendments and extensions, require Tribal Council's authorization for the Governor's signature.

3. Exceptions:

a. Non-Purchase Contracts, waiving the Pueblo's sovereign immunity or consenting to the jurisdiction of any non-pueblo party always require Tribal Council's authorization.

10-07

DISPOSAL, LIQUIDATION, SURPLUS

10-07-01. General Terms

A. POI is encouraged to use excess and surplus property in lieu of purchasing new equipment or property whenever such use is feasible and reduces project costs.

B. A Requesting Department seeking to dispose of or liquidate an asset shall submit a request to the Treasurer. Such request shall include:

- i. A description of the asset;
- ii. A justification for the asset's disposal or liquidation;
- iii. An estimated value of the asset.

C. The Treasurer shall determine whether to deny or grant a request to dispose or liquidate an asset. If liquidation is authorized, the Treasurer shall determine the appropriate means for such liquidation, including private sale, public auction, or public auction specific to POI Tribal Members. Assets shall only be disposed of or liquidated for their fair market value. The Treasurer shall provide notice to the Tribal Council of the intended disposal of assets with an expected disposal value of \$250,000 or more. The Tribal Council may modify or overrule any determination of the Treasurer regarding asset disposal as it deems appropriate.

D. The Treasurer is authorized and directed to publish forms, procedures, guidelines, and/or internal control to ensure that disposal and liquidation of POI assets comports with the Treasurer's fiduciary duty to POI and Tribal Members.

**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 estray. Any person who fails to comply with this §30-14-01 is guilty of failure to brand livestock.

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

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

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

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

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

30-14-04. Using More than One Brand

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 estray animals, and the monies resulting therefrom shall be paid to the tribe.

30-14-19. Definition of Carcasses

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

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

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.

**TITLE 31
CHILDREN’S CODE**

**31-01
GENERAL PROVISIONS**

31-01-01. Purpose

A. It is the purpose of this Children’s Code to secure for each child coming before the Tribal Children’s Court such care, guidance, and control, preferably in his own home as will serve their welfare and the best interests of the Pueblo of Isleta Tribe; to preserve and strengthen family ties wherever possible; to preserve and strengthen the child’s cultural and ethnic identify wherever possible; to secure for any child removed from their home the care, guidance and control as nearly equivalent as that which they should have been given by the parents to help them develop into responsible, well-adjusted adults, and to protect the peace and security of the community and its individual residents from juvenile violence or law-breaking.

B. The Pueblo of Isleta is a federally recognized Tribe of Indians organized under a Constitution adopted in 1947, revised on February 23, 1970, and October 20, 1990, pursuant to the provisions of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §§ 461 et seq., as amended.

C. The Pueblo of Isleta recognizes that its children are its most important resource. It is the policy of the Pueblo of Isleta to prevent the break-up of families and provide for the specific welfare of the Community pursuant to its powers delegated under Article V, Section 2(e) of the Pueblo of Isleta Constitution through enactment of this Code.

D. This Code shall be liberally construed to effect the purposes stated in the Indian Child

Welfare Act of 1976, P.L. 95-608, 25 U.S.C. §§ 1901, et seq; and the Indian Family Protection Act 32A-28-1 to 32A-28-42, NMSA 1978.

31-01-02. Definitions

As used in the Children's Code:

- A. "active efforts" means efforts that are affirmative, active, thorough and timely and that represent a higher standard of conduct than reasonable efforts;
- B. "adult" means a person who is eighteen years of age or older;
- C. "case plan" means a plan created by the Department intended to ensure the safety and well-being of a child and any of the child's parents, relatives, guardians, family members or caregivers to the extent those treatment needs and services are relevant to the safety of the child;
- D. "child" means a person who is less than eighteen years old;
- E. "court", when used without further qualification, means the children's court division of the Isleta Tribal Court;
- F. "custodian" means an adult with whom the child lives who is not a parent or guardian of the child;
- G. "Department" means the Isleta Social Services Department, unless otherwise specified;
- H. "designee" means Any other person assigned at the discretion of the Governor and Isleta Social Services Director;
- I. "Child welfare attorney" means the Children's Court attorney who represents both Truancy and Isleta Social Services in Children's Court proceedings not including delinquency;
- J. "federal Indian Child Welfare Act of 1978" means the federal Indian Child Welfare Act of 1978, as that act may be amended or its sections renumbered;
- K. "foster parent" means a person, licensed or certified by the Department to provide care for children in the custody of the Department;
- L. "Grandparent" means a person who is related to a child either biologically or through adoption, as the parent of the child's parent (grandparent); the great-grandparent of a child; the great-aunt or great-uncle of the child; the godparents of the child; or the witnesses at the traditional wedding of the child's parents. The termination of a parent's parental rights does not affect the relationships defined above;
- M. "guardian" means a person who legally has the care and management of the person or the estate or both, of a child during the child's minority;

- N. "guardian ad litem" means an attorney appointed by the children's court to represent and protect the best interests of the child in a case; provided that no party or employee or representative of a party to the case shall be appointed to serve as a guardian ad litem;
- O. "Indian Family Protection Act" means the State of New Mexico law that affirms, codifies and expands on the provisions of the federal Indian Child Welfare Act of 1978, designed to strengthen and expand protections for Native American children and families in the child welfare system;
- P. "Indian child" means for ICWA purposes a child who is a member of a tribe or band that is acknowledged to exist as a tribe or a band by the United States Secretary of the Interior, or a child who is eligible for such membership based on tribal law, custom and tradition or who is the natural child of at least one parent or grandparent who is a member under this Code;
- Q. "Indian child's tribe" means:
- i. The Indian tribe in which an Indian child is a member or eligible for membership based on tribal law, custom and tradition; or
 - ii. In the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts;
- R. "Indian tribe" means an Indian nation, tribe, pueblo or other band, organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including an Alaska native village as defined in 43 U.S.C. Section 1602(c) or a regional corporation as defined in 43 U.S.C. Section 1606. For the purposes of notification to and communication with a tribe as required in the Indian Family Protection Act, "Indian tribe" also includes those tribal officials and staff who are responsible for child welfare and social services matters;
- S. "Judge", when used without further qualification, means the Judge of the Isleta Tribal Court;
- T. "legal custody" means a legal status created by order of the court or other court of competent jurisdiction or by operation of statute that vests in a person, Department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications; and the right to consent to the child's enlistment in the armed forces of the United States;
- U. "physical custody" means who is physically responsible for the children and for how long. Physical custody gives the guardian the right and obligation to take care of the child on a

daily basis. Physical custody allows for the child to live with the guardian chosen by the Department and allows Department oversight of that placement;

V. "member" or "membership" for the purposes of ICWA means a determination made by an Indian tribe that a person is a member of or eligible for membership based on custom and tradition in that Indian tribe or who is the natural child of at least one parent or grandparent who is a member under this Code;

W. "parent" or "parents" means a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child or a person who has lawfully adopted an Indian child pursuant to state law or tribal law or tribal custom, and tradition, unless their parental rights have been suspended or terminated;

X. "paternity" means when a father has not been listed on the child's birth certificate or there is a question of who the father is, biology should be established through verified DNA testing;

Y. "permanency plan" means a determination by the court that the child's long-term interest will be served best by:

- i. Reunification;
- ii. Placement with a person who will be the child's permanent guardian;
- iii. Placement in the legal custody of the Department under a planned permanent living arrangement; or
- iv. Placement for Customary or Traditional adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;

Z. "person" means an individual or any other form of entity recognized by law;

AA. "relative placement" means a placement with a relative who has been approved by the Department. Approval shall be made only upon the following conditions;

- i. Completion of a home assessment; and
- ii. background clearance;

BB. "supervised visitation" means when a parent is only allowed to visit with their child under the supervision of another individual, such as a family member or a social worker. The visit may take place at the parent's home or in a designated visitation facility;

CC. "ward of the court" "someone who is housed by, and receives protection and necessities from, the Pueblo of Isleta.

31-01-03. Establishment of the Children's Court

There is established a Children's Court exercising jurisdiction over enrolled children, or a child who is eligible for such membership based on tribal law, custom and tradition or who is the natural child of at least one parent or grandparent who is a member under this Code. Indian children domiciled within the jurisdiction of the Pueblo of Isleta. The Isleta Tribal Court shall constitute the Children's Court until such time that a specific and separate Court is fully established.

31-01-04. Jurisdiction

A. The Children's Court shall have exclusive, original jurisdiction of all proceedings brought under this Code for any Indian child within the jurisdiction of the Pueblo of Isleta.

B. The Children's Court shall have exclusive, original jurisdiction over the following proceedings:

- i. Termination of parental rights;
- ii. Suspension of parental rights;
- iii. Customary or Traditional Adoption of a Pueblo of Isleta Child;
- iv. To determine legal custody of any Indian child or to appoint a guardian or permanent guardian or legal custodian of any child who comes within the Children's Court jurisdiction;
- v. To determine whether a family is a family in need of court ordered services;
- vi. To determine proper placement, if necessary, for a child adjudicated by the Court;
- vii. To determine the proper care and services for a child adjudicated by the Court;
- viii. For the placement or treatment of a developmentally disabled or mentally ill child who comes within this Court's jurisdiction;
- ix. To determine the proper care and services for a child determined to be truant or habitually truant;
- x. Proceedings transferred to the Tribe pursuant to the Indian Child Welfare Act, 25U.S.C. 1901, et seq, hereinafter "ICWA"; and the Indian Family Protection Act, 32A-28, NMSA 1978, hereinafter "IFPA.";
- xi. Proceedings to determine whether a child is delinquent and the proper care and services needed for the child; and
- xii. Proceedings involving Voluntary Placement Agreements.

C. Jurisdiction obtained by the Children's Court over a child is retained until terminated by any of the following situations:

- i. A Court Order expires; and
- ii. The Court issues an Order terminating the case.

31-01-05. Transfers from Other Courts

A. Pursuant to ICWA, 25 U.S.C. §1911B; and IFPA, 32A-1-9, 1978, the Pueblo may transfer, any State or other Tribal Court neglect, abuse, family in need of court-ordered services or adoption proceedings regarding, any Pueblo child who is an enrolled child, or a child who is eligible for such membership based on tribal law, custom and tradition or who is the natural child of at least one parent or grandparent who is a member under this Code. In the Pueblo of Isleta, if Isleta Social Services finds that the transfer would not be detrimental to the best interests of the child. To initiate a transfer from another jurisdiction, the Department shall:

i. File a motion to intervene. The Tribe's representative responsible for ICWA, Social Services Director, or the Child welfare attorney will file the motion with the state or other Tribal Court without delay; and

ii. The Social Services Director shall make a recommendation to the Family Services Presenting Officer, and/or the Tribe's representative responsible for ICWA to petition the Isleta Children's Court requesting a transfer be made from State or other tribal courts. The following factors shall be considered:

1. The best interests of the child;
2. The best interests of the Tribe;
3. The availability of services for the child and his/her family; and
4. Whether any prospects for permanent placement of the child exist.

a. A petition shall be filed with the Isleta Children's Court describing why the transfer is necessary. The Isleta Children's Court has discretion whether to accept or deny transfers from other tribal or state courts.

b. Upon the Isleta Children's Court granting the Petition to Transfer, the Tribe shall file a Petition for Transfer in the appropriate state or tribal court without delay.

c. Upon receipt of Transfer of Jurisdiction from other tribal or state courts, the Pueblo of Isleta Children's Court shall hold appropriate hearings in accordance with this Code.

31-01-06. Powers and Duties

A. **Child Welfare Attorney:** This individual shall represent the Tribe in Abuse and Neglect, Family in Need of Court Ordered Services, Truancy Petitions, Customary Adoptions and Voluntary Placement proceedings under this Code and such person shall be designated by the Office of the Governor and the Isleta Social Services Director. This individual's name may be used interchangeably with Pueblo's counsel or Family Services Presenting Officer.

B. **Social Services Director:** This individual or his or her designee shall be responsible for investigation of all matters within the purview of this Code and shall be the Tribe's Court Officer in court actions absent an attorney. This employee of the Tribe shall be responsible for providing quarterly reports to the Governor's Office regarding the general number of cases investigated, the disposition of cases, the available community resources, the need for additional resources, and any other pertinent information necessary for the execution of this Code.

C. **Social Services Intake Worker Investigator:** or Social Services Director means a person employed by the Pueblo of Isleta to carry out the duties, objectives, and provisions of the Children's Code. The Social Services Intake Worker Investigator shall work in the Social Services Department. Subject to the limitations of this Code, the Social Services Intake Worker Investigator shall have the authority and duty to:

- i. Receive and examine complaints and allegations that a child is a Child in Need of Care for the purpose of determining the appropriate proceedings under the Children's Code;
- ii. Make investigative reports and recommendations to the Court;
- iii. Make appropriate referrals of cases to other agencies if the assistance of these agencies appear to be needed or desirable except that there shall be no referral to a state governmental agency without advanced approval in writing from the Judge of the Children's Court;
- iv. Identify and develop resources in the community;
- v. Make pre-disposition reports and recommendations to the Court;
- vi. Shall not testify against a child in a proceeding under this Code or in any Adjudicatory Hearing; and
- vii. Shall not be employed as or perform duties of a prosecutor or a law enforcement official for the community or elsewhere while acting as a Social Services Intake Worker Investigator/Director.

D. Truancy Officer: This individual or his or her designee shall be responsible for enforcement of compulsory school attendance for children as enumerated in the authorization language for his or her position.

E. Court Personnel: The Court personnel of the Pueblo of Isleta shall be responsible for maintaining all records of the Children's Court separate from other Court records and such records shall remain confidential unless ordered by the Court to be opened.

F. Guardian at Litem: means a person assigned by the Court to represent the best interests of the child.

G. Probation Officer: Probation officers who supervise youth who have been accused or convicted of crimes and are subsequently placed on probation. Juvenile probation officers work closely with law enforcement, social services, schools, and parents to help juveniles become successful. They decide how to move forward to address the situation at the start of the case. They may also be involved if the Judge decides a youth is delinquent and orders probation at the end of the case. They are under the supervision of the Isleta Tribal Court.

31-01-07. Basic Rights

A. Any party shall have the right to understand and speak in court proceedings under this title in the language they are most proficient in. The need for a court interpreter exists whenever a case participant is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to fully participate in the proceeding. Parties shall promptly inquire and advise the Court Clerk of the need for an interpreter as soon as practicable before a hearing. The court may appoint an interpreter of its own selection and each party may provide its own interpreter. An interpreter through whom testimony is received or communicated shall be put under oath to faithfully and accurately translate.

B. A child subject to the provisions of the Children's Code is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

C. In proceedings on a petition alleging a family in need of court-ordered services, or abuse and neglect, the court may appoint counsel if appointment of counsel would serve the interests of justice.

D. In proceedings on a petition alleging a family in need of court-ordered services, or abuse and neglect the court may appoint a guardian ad litem for a child under the age of fourteen and the court may appoint an attorney for a child fourteen years of age or older at the inception of the proceedings. An officer or employee of an agency vested with legal custody of the child shall not be appointed as a guardian ad litem or attorney for the child. Only an attorney with appreciable training or experience shall be appointed as guardian ad litem or attorney for the child.

E. When a child reaches fourteen years of age, the child's guardian ad litem shall continue as the child's attorney; provided that the court shall appoint a different attorney for the child if:

- i. The child requests a different attorney;
- ii. The guardian ad litem requests to be removed; or
- iii. The court determines that the appointment of a different attorney is appropriate.

F. Whenever it is reasonable and appropriate, the court shall appoint a guardian ad litem or attorney who is knowledgeable about the child's cultural background.

G. A person afforded rights pursuant to the provisions of the Children's Code shall be advised of those rights at that person's first appearance before the court on a petition filed under the Children's Code.

31-01-08. Rules of Procedure; Discovery, Motions

The Isleta Tribal Court Rules of Civil Procedure shall govern the procedure in all Children's Court proceedings, unless specifically provided by provisions under this code and with the exception of the Delinquency code, in which the Isleta Rules of Criminal Procedure shall govern.

31-01-09. Rules of Evidence

A. Pursuant to the Isleta Rules of Civil Procedures Rule 5.03, the Court will rule on whether particular testimony or other evidence will be admitted or excluded, using common law principles and guided by state or federal rules of evidence, unless otherwise specified under the provisions of this code.

B. The parties shall be afforded an opportunity to examine and controvert written reports received by the Court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

C. To protect children from testifying in Court against their parents and to ensure their best interest, hearsay statements by a child may be admitted by the Court in all proceedings under this Code, with the exception of the Delinquency section, as long as:

- i. The statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and

- ii. It is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

D. Further, the statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement—including its substance and the declarant's name—so that the party has a fair opportunity to meet it. The notice must be provided in writing before the

trial or hearing—or in any form during the trial or hearing if the court, for good cause, excuses a lack of earlier notice.

31-01-10. Petition; Form and Content

A. A petition initiating proceedings pursuant to the provisions of Section 31-01-4, shall be entitled, "In the Matter of, a child", and shall set forth with specificity:

- i. The facts necessary to invoke the jurisdiction of the court;
- ii. The relief sought;
- iii. The facts supporting the relief sought;
- iv. If violation of a criminal statute or other law or ordinance is alleged, the citation to the appropriate law;
- v. The name, birth date and residence address of the child;
- vi. The name and residence address of the parents, guardian, custodian or spouse, if any of the child; and if no parent, guardian, custodian or spouse, if any, resides or can be found within the state or if a residence address is unknown, the name of any known adult relative residing within the state or, if there be none, the known adult relative residing nearest to the court;
- vii. If the child has been removed, the name and residence address of the relative and/ or facility the child has been placed;
- viii. Whether the child is in custody or detention pursuant to the Delinquency Act and, if so, the place of custody or detention and the time the child was taken into custody;
- ix. Whether the child is an Indian child and, if so, any additional information required under the Indian Child Welfare Act *25 U.S.C. §1911*; and
- x. If any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known.

31-01-11. Petition; Who May Sign

A. A petition initiating proceedings pursuant to the provisions of Section 31-01-4 shall be signed by the Child welfare attorney, Truancy Officer, Prosecutor, or the Isleta Social Services Director.

B. An affidavit for an ex-parte custody order may be signed by any person who has knowledge of the facts alleged or is informed of them and believes that they are true.

31-01-12. Summons; Issuance and Content, Service

- A. After a petition has been filed, summonses shall be issued and served pursuant to the Isleta Civil Procedures Rule 2.02.
- B. The summons shall require the persons to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the Children's Code and shall have attached to it a copy of the petition.
- C. The court may endorse upon the summons an order directing the parent, guardian, custodian or other person having the physical custody or control of the child to bring the child to the hearing.
- D. If it appears from any sworn statement presented to the court that the child needs to be placed in detention, the judge may endorse on the summons an order that an officer serving the summons shall at once take the child into custody and take the child to the place of detention designated by the court, subject, however, to all of the provisions of the Children's Code relating to detention criteria and post-detention proceedings and the rights of the child in regard thereto.
- E. Any Notice for an Initial Hearing under this Chapter shall be by personal service or certified mail. All other Notices may be by standard mail.
- F. If a parent is unable to be located under this Subsection, authorization to provide Notice by publication in a newspaper of general circulation closest to the parent's last known address, may be authorized by Children's Court.

31-01-13. General Procedures: Computation of Time; Issuance of Orders

- A. In this Code, "Holiday" means any day which is designated a holiday by Tribal law.
- B. When a period of time is referred to in this Code and the time prescribed or allowed is less than eleven (11) days, Saturdays, Sundays and Holidays shall be excluded from the computation, with the exception of the Attendance for Success Act.
- C. When an act is required to be done at or within a specified time, the Judiciary (hereinafter referred to in this Code as the "Court") of the Tribe may order the period enlarged but only on Motion for Cause Shown and upon just terms. If the Motion is made after the expiration of the

specified time, it shall not be granted unless the Court finds that the failure to act was the result of excusable neglect.

D. All orders shall be timely issued. When the Children's Court is required by this Code to issue an order after a hearing, the court shall issue the order no later than ten (10) days after the hearing.

E. In the event of a natural disaster, war, global pandemic, or other unforeseeable circumstances beyond the parties' control, the timelines under this code may be tolled and amended to effectuate the intent of this code.

31-01-14 Appeals.

A. Any party may appeal the Tribal Court following an adjudicatory judgment to the court of appeals in the manner provided by law. The appeal shall be heard by the court of appeals upon the files, records and transcript of the evidence of the court. Absent an order of the appellate court, files and records that are required to be kept confidential and closed to the public, pursuant to any provision of the Children's Code shall be kept confidential and closed to the public on appeal.

B. The appeal to the court of appeals does not stay the judgment appealed from, but the court of appeals may order a stay upon application and hearing consistent with the provisions of the Children's Code if suitable provision is made for the care and custody of the child. If the order appealed from grants the legal custody of the child to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

C. If the court of appeals does not dismiss the petition and order the child released, it shall affirm the court's judgment or it shall modify the court's judgment and remand the child to the jurisdiction of the court for disposition consistent with the appellate court's decision on the appeal.

31-01-15. Confidentiality

A. All records pertaining to the child, including all related social records, behavioral health screenings, diagnostic evaluations, psychiatric reports, medical reports, social studies reports, records from local detention facilities, client-identifying records from facilities for the care and rehabilitation of delinquent children, pre-parole or supervised release reports and supervision histories obtained by the probation office or in possession of the Department, are confidential and shall not be disclosed directly or indirectly to the public.

B. The disclosure of all mental health and developmental disability records shall be made pursuant to the Children's Mental Health and Developmental Disabilities Act [32A-6A-1 to 32A-6A-30 NMSA 1978].

C. The records described in Subsection A of this section, other than mental health and developmental disability records, shall be disclosed only to any of the following, provided that

the agency, person or institution receiving information shall not re-release the information without proper consent or as otherwise provided by law:

- i. Court personnel;
- ii. Guardian ad litem representing the child in any matter;
- iii. Department personnel;
- iv. Law enforcement officials when the request is related to the investigation of a crime;
- v. Children's court attorneys;
- vi. Those persons or entities of a child's Indian tribe specifically authorized to inspect such records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated under that act;
- vii. A foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent, when the disclosure of the information is necessary for the child's treatment or care and shall include only that information necessary to provide for treatment and care of the child;
- viii. School personnel involved with the child if the records concern the child's educational needs, but shall only include that information necessary to provide for the child's educational planning and needs;
- ix. A health care or mental health professional involved in the evaluation or treatment of the child;
- x. The child's parents, guardians or custodian or other family members, unless providing them with the information would endanger the child.

31-02

VOLUNTARY PLACEMENT AGREEMENT

31-02-01. Purpose

The purpose of the Voluntary Placement Agreement is to provide an opportunity to strengthen and assist families and remediate risks that may lead to a removal or filing of a petition. A Voluntary Placement Agreement may be used in situations under the Family in Need of Court Ordered Services Act, for instances in which it is in the best interest of the child to live in an out of home placement, or for instances where a parent has substance use and/or domestic violence is occurring in the home and the parent requires additional support and time to remediate the possible safety concerns of having the child in the home. This Agreement furthers the Pueblo's intent to only file petitions when absolutely necessary to protect the child(ren), and to provide the parents' every opportunity to remediate risks before removal.

31-02-02. Process

A. If after a family calls the Department for voluntary services, or after an investigation, the Department determines the family is in need of services or in danger of abuse and neglect, prior to filing a petition, the Department may enter into a voluntary placement agreement with the child's parent, guardian or custodian.

B. The request for voluntary placement shall be initiated in writing by the child's parent or guardian, or the Department and if good cause is shown and the requirements of Subsection D of this section are met, the Department may accept temporary custody or placement and care responsibility. Placement and care responsibility means that the Department is legally accountable for the day-to-day care and protection of the child in foster care. Responsibility for placement and care allows the Department to make placement decisions about the child, such as where the child is placed and the type of placement that is most appropriate for the child.

C. In a voluntary foster or relative care placement involving a child, a child's parent or guardian may enter into a voluntary placement agreement with the Department. A child's parent's or guardian's consent is voidable unless it is executed in writing and recorded before the court.

D. If the child is not an Isleta eligible member, the Department shall notify the Indian child's tribe by certified mail, with return receipt requested, of the pending voluntary placement agreement and of the Indian child's tribe's right to intervene.

E. Before approving a voluntary placement agreement, the court shall ensure that the voluntary placement agreement is executed in writing. The court shall certify on the record that:

- i. The terms and consequences of the consent were fully explained in detail and in a manner that is understandable to the parent or guardian;
- ii. The child's parent or guardian fully understands the English language or that the voluntary placement agreement was interpreted into the primary language of the Indian child's parent or guardian;
- iii. The child is an Indian child;
- iv. There is no pending child abuse or neglect investigation involving the child;
- v. The child's parent or guardian is voluntarily entering into the voluntary placement without any threat of removal of the child by the Department;
- vi. The Department provided notice to the child's tribe via certified or registered mail with return receipt requested;
- vii. Confidentiality has been requested or indicated and execution of consent was made in a closed court proceeding not open to the public;

viii. If not represented, the child's parent or guardian is proceeding without an attorney and has the right to consult with an attorney of the child's parent's or guardian's own choosing; and

ix. The child's parent or guardian is of sound mind and judgment.

F. During voluntary placement, the Department shall make active efforts to provide tailored case planning to alleviate the causes and conditions leading to the voluntary placement agreement.

G. Any consent to a foster care placement that is given prior to or within ten days after birth of a child is voidable.

31-02-03. Request to Withdraw Voluntary Placement Agreement; Length of Placement

A. A child's parent or guardian may withdraw consent to a voluntary foster care placement of a child at any time. Upon receipt of a request to withdraw, the child shall be returned to the child's parent or guardian. The Department shall have up to forty-eight hours after withdrawal of consent to allow for transition arrangements to be made for the child's return to the child's parent or guardian.

B. A child shall not remain in voluntary placement for longer than one hundred eighty consecutive days or for more than one hundred eighty days in a calendar year; provided that a child may remain in voluntary placement up to an additional one hundred eighty consecutive days upon order of the court. If the child's parent or guardian seeks to extend the voluntary placement, the Department shall file a petition for an extension of voluntary placement prior to the expiration of the initial one-hundred-eighty-day period. The court shall hold a hearing and make a finding within the initial one-hundred-eighty-day period that the extension of voluntary placement is in the best interest of the child.

C. If a request for an extension is not filed with the court prior to the initial one-hundred-eighty-day period, the agreement expires. No later than thirty days before the expiration of the initial agreement, the court shall hold a review hearing to determine if the voluntary placement should be extended.

D. In no event shall a child remain in voluntary placement for a period in excess of three hundred sixty-five days in any two-year period.

E. Any voluntary placement pursuant to this section shall not be considered abandonment, neglect or abuse by a child's parent, guardian or extended family member.

31-02-04. Parental Rights

A. The parent or guardian whose child is in voluntary placement pursuant to this section shall have the following rights to:

- i. Have visitation with the child;
- ii. Be informed of changes in the child's school or of changes in the child's placement by the Department;
- iii. Authorize decisions regarding medical and dental care and behavioral health services, including decisions that affect the daily care, support, safety and well-being of the child, unless the parent consents in the Voluntary Placement Agreement to permitting the Department to authorize those decisions;
- iv. Permit the Department to consent to emergency services to ensure the safety and well-being of the child, including medical, dental or behavioral health treatment, if the Department is unable to make immediate prior contact with the parent or guardian. The Department shall notify the parent or guardian within two hours of making emergency decisions due to inability to make prior contact;
- v. Consent to all non-emergency and non-routine medical care provided for the child;
- vi. Make decisions regarding participation and attendance in cultural and religious events, including traditional and cultural events offered by the child's tribe; and
- vii. Make decisions of substantial legal significance.

B. If new safety concerns are identified during the voluntary placement, the Department shall not extend a voluntary placement agreement, but instead shall make a new report of suspected abuse or neglect to be screened for determination of a new Department investigation.

C. The voluntary placement shall adhere to and be in accordance with the placement preferences set forth in the Abuse and Neglect Act.

D. All records or information concerning the voluntary placement shall be confidential.

31-03 DELINQUENCY

31-03-01. Short title

This chapter may be cited as the "Delinquency Act."

31-03-02. Purpose

The purpose of the Delinquency Act is:

A. Consistent with the protection of the public interest, to remove from children committing delinquent acts the adult consequences of criminal behavior, but to still hold children committing delinquent acts accountable for their actions to the extent of the child's age, education, mental

and physical condition, background and all other relevant factors, and to provide a program of supervision, care and rehabilitation, including rehabilitative restitution by the child to the victims of the child's delinquent act to the extent that the child is reasonably able to do so;

B. To provide effective deterrents to acts of juvenile delinquency, including an emphasis on community-based alternatives;

C. To strengthen families and to successfully reintegrate children into homes and communities;

D. To foster and encourage collaboration between government agencies and the community with regard to juvenile justice policies and procedures;

E. To encourage efficient processing of cases;

F. To develop community-based alternatives to detention; and

G. To achieve reductions in the number of warrants issued, the number of probation violations and the number of youths awaiting placements.

31-03-03. Definitions

As used in the Delinquency Act:

A. "delinquent act" means an act committed by a child that is designated as a crime under the Isleta Law and Order Code if committed by an adult, including the following offenses:

i. Buying, attempting to buy, receiving, consuming, possessing or being served any alcoholic liquor or being present in a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse;

ii. Any of the following offenses pursuant to the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978]:

1. driving while under the influence of intoxicating liquor or drugs;

2. failure to stop in the event of an accident-causing death, personal injury or damage to property;

3. homicide by vehicle;

4. great bodily harm by vehicle;

5. altering or changing of an engine number or other vehicle identification numbers;

6. altering or forging of a driver's license or permit or any making of a fictitious license or permit;
 7. reckless driving;
 8. driving with a suspended or revoked license;
 9. an offense punishable as a felony;
- B. "delinquent child" means a child who has committed a delinquent act;
- C. "detention facility" means a place where a child may be detained under the Children's Code pending a court hearing;
- D. "restitution" means financial reimbursement by the child to the victim or community service imposed by the court and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury, which are a direct and proximate result of a delinquent act. "Restitution" does not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. As used in this subsection, "victim" means a person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities.

31-03-04. Rules of Procedure; Evidence

Delinquency proceedings before the Children's Court shall be governed by the Isleta Rules of Criminal Procedure, to the extent that such rules are not in conflict with the provisions of this title.

31-03-05. Taking into Custody

- A. Unless ordered by the court pursuant to the provisions of the Delinquency Act, a child taken into custody for an alleged delinquent act shall not be placed in detention unless a determination is made that the child:
- i. Poses a substantial risk of harm to himself;
 - ii. Poses a substantial risk of harm to others;
 - iii. Is likely to flee the jurisdiction of the Court; or
 - iv. Has violated Court Ordered Conditions of Release.
- B. A child under the age of twelve shall not be held in detention. If a child under the age of twelve poses a substantial risk of harm to the child's self or others, a law enforcement officer

may detain and transport that child for emergency mental health evaluation and care in collaboration with the Social Services Department.

C. If a child is taken into custody for violation of Court ordered Conditions of Release, and is not released to the child's parent, guardian or custodian or an adult authorized by the child's parent, guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian or an adult authorized by the child's parent, guardian or custodian and to the court, together with a statement of the reason for taking the child into custody.

31-03-06. Initiation of Delinquency Proceedings

Proceedings under the Delinquency Act shall be initiated in conformity with the Isleta Rules of Criminal Procedure except that complaints for Juvenile Delinquency shall be titled "Petition for Juvenile Delinquency."

31-03-07. Detention Hearing Required on Detained Children; Probable Cause Determination

- A. When a child who has been taken into custody is not released but is detained:
- i. A judicial determination of probable cause shall be made by a judge within forty-eight hours, excluding Saturdays, Sundays and Tribal holidays, except for children taken into custody under an arrest warrant. A statement by a law enforcement officer, which shall include the charges, may be the basis of a probable cause determination. The probable cause determination shall be non-adversarial, may be held in the absence of the child and counsel and may be conducted by telephone. If the court finds no probable cause to believe the child committed an offense, the child shall be released;
 - ii. A petition shall be filed immediately from the time the child is taken into custody, excluding Saturdays, Sundays and holidays or traditional events, and if not filed immediately, the child shall be released; and
 - iii. A detention hearing shall be held within twenty-four hours, excluding Saturdays, Sundays and holidays or traditional events, from the time of filing the petition to determine whether continued detention is required pursuant to the criteria established by the Children's Code.
- B. Notice of the detention hearing, either oral or written, stating the time, place and purpose of the hearing shall be given by the person designated by the court to the child's parents, guardian or custodian, if they can be found, and to the child. The prosecutor shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this subsection, the Probation Officer may appear.

C. At the commencement of the detention hearing, the judge shall advise the parties of their basic rights provided in the Children's Code and shall appoint a public defender, guardians and custodians, if appropriate.

D. If the judge finds that the child's detention is appropriate under the criteria established by the Children's Code, the judge shall order detention in an appropriate facility in accordance with the Children's Code.

E. If the judge finds that detention of the child is not appropriate under the criteria established by the Children's Code, the judge shall order the release of the child, but in so doing, may order one or more of the following conditions to meet the individual needs of the child:

i. Place the child in the custody of a parent, guardian or custodian or under the supervision of an agency agreeing to supervise the child;

ii. Place restrictions on the child's travel, association with other persons or place of abode during the period of the child's release; or

iii. Impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children established by the Children's Code, including a condition requiring that the child return to custody as required.

F. An order releasing a child on any conditions specified in this section may at any time be amended to impose additional or different conditions of release or to return the child to custody or detention for failure to conform to the conditions originally imposed.

G. At the detention hearing, all relevant and material evidence helpful in determining the need for detention may be admitted by the judge even though it would not be admissible in a hearing on the petition.

H. If the child is not released at the detention hearing and a parent, guardian or custodian was not notified of the hearing and did not appear or waive appearance at the detention hearing, the judge shall rehear the detention matter without unnecessary delay upon the filing of an affidavit stating the facts and a motion for rehearing.

I. If a child is not released at the detention hearing, the child's detention may be subsequently reviewed by the court or the court may review the child's detention in conjunction with a pretrial conference.

31-03-08. Least Restrictive Alternatives

A. When a child is detained or subject to conditional or supervised release pursuant to the provisions of this chapter, the Children's Court shall order only the least restrictive conditions or placement consistent with:

i. The best interests of the child;

- ii. The safety of the community;
- iii. The safety of the child; and
- iv. Whether the child poses a flight risk.

B. Whenever the Children's Court orders the detention of a child, or enters an order imposing conditions upon the child's release, the order shall include a statement of the Children Court's reasons for rejecting less restrictive alternatives.

31-03-09. Basic Rights

A. A child subject to the provisions of the Delinquency Act is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code, including rights provided by the Delinquency Act.

B. The Pueblo's public defender or conflict counsel shall represent the child in all delinquency proceedings.

C. No person subject to the provisions of the Delinquency Act who is alleged or suspected of being a delinquent child shall be interrogated or questioned without first advising the child of the child's constitutional rights and securing a knowing, intelligent and voluntary waiver.

D. Upon a challenge by defense, before any statement or confession may be introduced at a trial or hearing when a child is alleged to be a delinquent child, the Pueblo shall prove that the statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's constitutional rights was obtained.

E. In determining whether the child knowingly, intelligently and voluntarily waived the child's rights, the court shall consider the following factors:

- i. The age and education of the respondent;
- ii. Whether the respondent is in custody;
- iii. The manner in which the respondent was advised of the respondent's rights;
- iv. The length of questioning and circumstances under which the respondent was questioned;
- v. The condition of the quarters where the respondent was being kept at the time of being questioned;
- vi. The time of day and the treatment of the respondent at the time of being questioned;

vii. The mental and physical condition of the respondent at the time of being questioned;
and

viii. Whether the respondent had the counsel of an attorney, friends or relatives at the time of being questioned.

F. Notwithstanding any other provision to the contrary, no confessions, statements or admissions may be introduced against a child under the age of thirteen years on the allegations of the petition. There is a rebuttable presumption that any confessions, statements or admissions made by a child thirteen or fourteen years old to a person in a position of authority are inadmissible.

G. An extrajudicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the delinquent acts alleged in the petition unless it is corroborated by other evidence.

H. The child and the parent, guardian or custodian of the child shall be advised by the court or its representative that the child shall be represented by counsel at all stages of the proceedings on a delinquency petition, including all post-dispositional court proceedings.

I. A child under the age of thirteen alleged or adjudicated to be a delinquent child shall not be fingerprinted or photographed for identification purposes without obtaining a court order.

J. The court shall appoint a guardian for a child if the court determines that the child does not have a parent or a legally appointed guardian in a position to exercise effective guardianship. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.

K. A person afforded rights under the Delinquency Act shall be advised of those rights at that person's first appearance before the court on a petition under that act.

31-03-10. Diversion Options

A. It is the discretion of the Prosecutor whether to offer a diversion option. Children offered a diversion option will be monitored by the Probation Department.

B. The conditions of a diversion agreement entered into pursuant to a Consent Decree, an order deferring adjudication entered in accordance with a Time Waiver, or an order deferring disposition, may include any of the following:

i. Referral of the child to social, community, or tribal services or resources appropriate for addressing the needs of the child;

- ii. Participation in tribal peacemaking or other extrajudicial alternatives for resolving conflicts or disputes;
- iii. Participation by the child in cultural, educational, or other programs or activities aimed at rehabilitation, community involvement, or competency development, or which are otherwise appropriate for addressing the child's needs;
- iv. Participation by the child in an educational or counseling program designed to deter delinquent acts or other conduct or conditions which would be harmful to the child or the community;
- v. A requirement that the child undergo medical, psychological, or psychiatric examination or treatment;
- vi. A requirement that the child pay restitution;
- vii. Performance by the child of community service;
- viii. A requirement that the child maintain satisfactory school attendance, or otherwise pursue a course of study designed to lead to achieving a high school diploma or the equivalent;
- ix. Participation by the child in structured after-school, evening, or other court-approved programs appropriate for addressing the needs of the child and providing for the safety of the community; or
- x. Other reasonable conditions aimed at:
 - a. Holding the child accountable for his or her actions;
 - b. Providing for the safety and protection of the community; or
 - c. Promoting the development of competencies which will enable the child to become a responsible and productive member of the community.

C. The conditions of a diversion agreement entered into pursuant to a Consent Decree, an order deferring adjudication entered in accordance a Time Waiver, or an order deferring disposition:

- i. Shall not include detention in a secure juvenile detention facility, nor participation in alternative programs or services specifically intended as alternatives to secure detention nor otherwise directed solely at meeting the needs of adjudicated youth.

31-03-11. Diversion Agreements

- A. The child and the child's parent, guardian or custodian may enter into a written diversion agreement setting forth:
- i. The rights of the child and the child's parent, guardian or custodian under the provisions of this title;
 - ii. That entry into a diversion agreement is voluntary, and that the child may withdraw from the diversion agreement at any time;
 - iii. That withdrawal from the diversion agreement may lead to the filing of a delinquency petition; and
 - iv. Particular conditions, which may include any of the options specified in the sentencing section of this title, to be fulfilled by the child over a period not to exceed six (6) months.
- B. If the child fulfills the conditions of the diversion agreement, no further action shall be taken in the matter.
- C. If the child does not fulfill the conditions of the diversion agreement, the Probation Officer may:
- i. confer with the child and the child's parent, guardian or custodian for the purpose of effecting necessary or recommended modifications to the diversion agreement; or
 - ii. recommend that the Prosecutor file a delinquency petition.
- D. Upon finding by a preponderance of the evidence that the child has fulfilled the conditions of the diversion agreement, the Children's Court shall dismiss with prejudice any subsequent delinquency petition arising out of the alleged incident.

31-03-12. Time Waiver

The child, through counsel, and the prosecutor may agree, without judicial approval, to a waiver of time limitations for up to one year imposed after a petition is filed. A time waiver defers adjudication of the charges. The prosecutor may place restrictions on a child's behavior as a condition of a time waiver. If the child completes the agreed upon conditions and no new charges are filed against the child, the pending petition shall be dismissed with prejudice. If the prosecutor files a new petition against the child, the prosecutor may proceed on both the original petition and the new charges.

31-03-13. Consent Decree

A. An admission of some or all allegations stated in the delinquency petition shall not be required for a consent decree. The court may enter a consent decree that places the respondent child under supervision for a period not to exceed six (6) months under conditions approved by

the court. As part of a consent decree, the parties may agree to an extension of the consent decree not to exceed an additional six (6) months.

B. The prosecutor may move the court for an order extending the original consent decree for a period not to exceed six (6) months from the expiration of the original decree if the child has been non-compliant with the consent decree. The motion for extension shall be filed prior to the expiration of the original decree. If the respondent child objects to the extension, the court shall hold a hearing to determine if the extension is in the best interests of the respondent child and the public.

C. A consent decree and any extension may not exceed one (1) year from the date of the entry of the original consent decree.

D. If, prior to discharge by probation services or the expiration of the consent decree, whichever occurs earlier, the respondent child allegedly fails to fulfill the terms of the decree, the prosecutor may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted in the same manner as proceedings on petitions to revoke probation.

E. Upon a finding that the Child violated the terms of their consent decree, the prosecutor may revoke the consent decree and the case shall return to the Juvenile docket.

31-03-14. Time Limitations on Delinquency Adjudicatory Hearing

A. The adjudicatory hearing in a delinquency proceeding shall be commenced within ninety days (90) days from whichever of the following occurs latest:

- i. The date of the initial hearing;
- ii. If an issue is raised concerning the child's competency to participate at the adjudicatory hearing, the date an order is entered finding the child is competent to participate at the adjudicatory hearing;
- iii. If the proceedings have been stayed on a finding of incompetency to participate in the adjudicatory hearing, the date an order is filed finding the child competent to participate in an adjudicatory hearing;
- iv. If a mistrial is declared or a new adjudicatory hearing is ordered by the children's court, the date such order is filed;
- v. In the event of an appeal, the date the mandate or order is filed in the children's court disposing of the appeal;
- vi. If the child fails to appear at any time set by the court, the date the child is taken into custody in this state after the failure to appear or the date an order is entered quashing the warrant for failure to appear;

vii. If the child is taken into custody in another jurisdiction, the ninety days (90) shall begin to run on the date the child is returned to the Pueblo;

viii. The date the court allows the withdrawal of a plea or rejects a plea; or

ix. For good cause shown.

B. The party seeking an extension of time shall file with the clerk of the children's court a motion for extension concisely stating the facts that support an extension of time to commence the adjudicatory hearing. The motion shall be filed within the applicable time limit prescribed by this rule, except that it may be filed within ten (10) days after the expiration of the applicable time limit if it is based on exceptional circumstances beyond the control of the parties or tribal court which justify the failure to file the motion within the applicable time limit. A party seeking an extension of time shall forthwith serve a copy thereof on opposing counsel. Within five (5) days after service of the motion, opposing counsel may file an objection to the extension setting forth the reasons for such objection. No hearing shall be held except upon order of the children's court. If the children's court grants an extension beyond the applicable time limit, it shall set the date upon which the adjudicatory hearing must commence.

C. The children's court may deny an untimely motion for extension of time or may grant it and impose other sanctions or remedial measures, as the court may deem appropriate in the circumstances. In the event the adjudicatory hearing of any person does not commence within the time limits provided in this rule, including any court-ordered extensions, the case shall be dismissed with prejudice.

31-03-15. Conduct of Hearings; Findings; Dismissal; Dispositional Matters

A. Hearings on petitions shall be conducted by the court separate from other proceedings. A jury trial on the issues of alleged delinquent acts may be demanded by the child, in proceedings on petitions alleging delinquency when the offense alleged would be triable by jury if committed by an adult. If a jury is demanded and the child is entitled to a jury trial, the jury's function is limited to that of trier of the factual issue of whether the child committed the alleged delinquent acts. If no jury is demanded, the hearing shall be by the court without a jury. Jury trials shall be conducted in accordance with rules promulgated by the Isleta Tribal Court. A delinquent child facing a juvenile disposition shall be entitled to a six-member jury. A unanimous verdict is required for all jury trials. An adjudicated child shall not be responsible for any fees or fines if they lose a jury.

B. All hearings to declare a person in contempt of court and all hearings on petitions pursuant to the provisions of the Delinquency Act shall be closed to the general public.

C. The court or jury shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court or jury shall proceed to hear evidence on the petition. The court after hearing all of the evidence bearing on the allegations of delinquency or after a finding of guilt by a jury, shall make and record its findings on whether the delinquent acts subscribed to the child were committed by the child. If the court finds that the allegations of delinquency have

not been established either by a jury decision of guilt or a bench trial, it shall dismiss the petition and order the child released from any detention or legal custody imposed in connection with the proceedings.

D. The court may make a finding of delinquency based on a valid admission of the allegations of the petition or on the basis of proof beyond a reasonable doubt.

E. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of proof beyond a reasonable doubt that the child is a delinquent, the court may proceed immediately or at a postponed hearing to make disposition of the case.

F. In that part of the hearings held under the Delinquency Act at disposition, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues.

G. On the court's motion or that of a party, the court may continue the hearing on the petition for a reasonable time to receive reports and other evidence in connection with disposition. The court may continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuances under this subsection, the court shall make an appropriate order for detention or legal custody.

31-03-16. Disposition Hearing; Delinquency

A. If the Children's Court adjudicates the child as a juvenile offender, it shall make one or more of the following dispositions that it determines are in the best interest of the child:

- i. Permit the child to remain with his or her parent, guardian, or custodian, subject to such conditions and limitations as the court may prescribe;
- ii. Place the child in the legal custody of a relative, other suitable person, or the Pueblo acting through the Department, subject to such conditions and limitations as the court may prescribe;
- iii. Place the child in foster care home for delinquent children;
- iv. Place the child in a juvenile residential care facility;
- v. Order the child, to pay restitution for actual damages suffered due to the juvenile offense;
- vi. Order the child to perform community service;
- vii. Prohibit the child from operating a motor vehicle within the external boundaries of the Pueblo;

- viii. Order the child to attend a course designed to improve driving skills;
- ix. Place the child under the supervision of the Department or other suitable person;
- x. Order the Department to provide protective supervision to the child and/or protective services to the child and his or her parent, guardian, or custodian;
- xi. If the child is in need of special treatment and care for his or her physical; mental health, refer the child for such treatment;
- xii. Any diversion options with the following time limitations:
 - 1. Six-month consent decree
 - 2. One year consent decree
- xiii. Up to a two-year term of probation; or
- xiv. A short-term commitment of one year in a facility for the care and rehabilitation of adjudicated delinquent children. No more than nine months shall be served at the facility and no less than ninety days shall be served on probation, unless:
 - 1. A petition to extend the commitment has been filed prior to the commencement of probation;
 - 2. The commitment has been extended; or
 - 3. Probation is revoked;

B. In delinquency matters, the Children's Court shall have the authority to extend jurisdiction over a child for dispositional purposes up to age nineteen (19).

C. The child's parent, guardian, or custodian and any person or entity that has legal custody of a child shall report to the Children's Court, as the court may direct.

D. When a child is adjudicated on multiple offenses, the dispositions shall run concurrently.

31-03-17. Disposition Orders; Delinquency Proceedings

A. At the conclusion of the initial disposition hearing and any disposition review hearing, the Children's Court shall prepare a written disposition order containing its factual findings and one or more dispositions.

B. A juvenile disposition order is a final order for purposes of appeal.

C. The Children's Court may, after a hearing and upon good cause, modify, revoke, or extend a juvenile disposition order at any time upon the motion of the child, the child's parents, guardian, or custodian, or other interested party.

D. All review hearings and hearings to modify, revoke, or extend a juvenile disposition order shall be conducted in accordance with the Isleta Tribal Court Rules of Criminal Procedure.

31-03-18. Probation Revocation; Disposition

A. A child on probation incident to an adjudication as a delinquent child who violates a term of the probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be begun by filing in the original proceeding a petition styled as a "petition to revoke probation". Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging delinquency. Procedures of the Delinquency Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations.

B. The standard of proof in probation revocation proceedings shall be evidence that is clear and convincing and the hearings shall be before the court without a jury, the rules of evidence shall not apply. If a child is found to have violated a term of the child's probation, the court may extend the period of probation or make any other judgment or disposition that would have been appropriate in the original disposition of the case.

31-04 ATTENDANCE FOR SUCCESS

31-04-01. Short Title

This chapter may be cited as the "Attendance for Success Act".

31-04-02. Purpose

It is the purpose of the Attendance for Success Act to advance student success and help close equity gaps by reducing chronic absence. Further, to support Pueblo of Isleta students attain educational success, inspire our generations, develop structured habits, and build successful futures, as well as to be self-sufficient and enhance their life skills.

31-04-03. Definitions

As used in the Attendance for Success Act:

A. "absent" means not in attendance for a class or school day for any reason, whether excused or not; provided that "absent" does not apply to participation in interscholastic extracurricular activities;

B. "interscholastic extracurricular activities" means those activities sponsored by a public school or an organization whose principal purpose is the regulation, direction, administration and supervision of interscholastic extracurricular activities in public schools;

C. "excused absence" means absence from a class or school day for a death in the family, medical absence, religious instruction or tribal obligations or any other allowable excuse pursuant to the policies of the local school board;

D. "unexcused absence" means an absence from a class or school day for which the student does not have an allowable excuse pursuant to Isleta law and/or the policies of the local school board;

E. "medical absence" or "medically absent" means that a student is not in attendance for a class or a school day for a parent- or doctor-authorized medical reason or the student is a pregnant or parenting student;

F. "habitually truant" means a child who is absent from school without an authorized excuse more than ten days during a school semester.

31-04-04. School Attendance

A. Every Indian child from age five (5) until eighteen (18) years of age who are enrolled members or eligible for membership with Isleta or residing within the Pueblo of Isleta shall attend a public or tribal school full-time when school is in session, unless the child:

- i. Is receiving home-based instruction as defined in subsection (D); or
- ii. The superintendent of the school district in which the child resides has excused the child from attendance because the child is physically or mentally unable to attend school; or
- iii. Is detained in a secure juvenile detention facility or other correctional facility; or
- iv. Has been temporarily excused upon the request of his or her parent, guardian or custodian for purposes agreed upon and in writing by the school authorities and the parent.

B. Is sixteen (16) years of age or older and has already met graduation requirements in accordance with state board of education rules and regulations.

C. The parent, guardian or custodian of any Indian child under eighteen (18) years of age who are enrolled members or eligible for membership with Isleta or residing within the Pueblo shall ensure that the child complies with the requirements set forth in subsection (A).

D. For the purposes of this chapter, instruction shall be home-based if:

- i. The instruction consists of planned and supervised instructional and related educational activities established by the state or other certifying jurisdiction; and
- ii. Such instruction is provided by a parent who is:
 - 1. instructing only his or her child, under the supervision of a person certified for such instruction by the state or other certifying jurisdiction; or
 - 2. deemed sufficiently qualified to provide home-based instruction by the superintendent of the school district in which the child resides.

31-04-05. Informal Truancy Proceedings

- A. Upon determining that a child has had three (3) unexcused absences within any single month, the Truancy Case Coordinator:
 - i. Shall immediately notify the child's parent, guardian or custodian, in writing or by telephone; and
 - ii. Shall inform the child's parent, guardian or custodian of the potential consequences of additional unexcused absences;
- B. Upon determining that a child has had six (6) unexcused absences in the current school semester
 - i. Shall immediately notify the child's parent, guardian or custodian, in writing or by telephone; and
 - ii. Shall, within five (5) business days, conduct an attendance review conference with the child and the child's parent, guardian or custodian.

31-04-06. Attendance Review Conference; Purpose and Conduct

- A. The purpose of the attendance review conference shall be:
 - i. To review the causes for the child's unexcused absences; and
 - ii. To discuss steps to improve the child's school attendance, which may include:
 - 1. Obtaining more individualized or remedial instruction;
 - 2. Adjusting the child's educational program or school or course assignment;
 - 3. Enrolling in appropriate vocational courses or seeking appropriate work experience;

4. Enrolling the child in an alternative school or educational program; or
 5. Assisting the child's parent, guardian or custodian to obtain services or resources that might eliminate or ameliorate the causes for the child's unexcused absences.
- B. At the conclusion of the attendance review conference, the Truancy Case Coordinator shall:
- i. Together with the child and the child's parent, guardian or custodian, develop an informal attendance plan; and
 - ii. Within ten (10) business days of the attendance review conference, inform the Child welfare attorney of the informal attendance plan.
- C. Prior to convening the attendance review conference, the Truancy Case Coordinator shall inform the child and the child's parent, guardian or custodian of:
- i. The potential consequences of failing to attend an attendance conference;
 - ii. Of the nature and purpose of the attendance review conference; and
 - iii. That participation in the attendance review conference is voluntary.
- D. If the child declines to attend or participate in the attendance review conference, the Truancy Case Coordinator shall, subject to the other provisions of this section, conduct the attendance review conference without the participation of the child.
- E. If the child's parent, guardian or custodian declines to attend or participate in the attendance review conference, the Truancy Case Coordinator may conduct the attendance review conference without the participation of the child's parent, guardian or custodian, if:
- i. The Truancy Case Coordinator determines that the factors contributing to the child's truancy may be addressed without the participation of the child's parent, guardian or custodian; and
 - ii. The child's parent, guardian or custodian consents to the child's participation.

31-04-07. Truancy Petition

A. The Truancy Case Coordinator shall recommend that the child welfare attorney or the Truancy Director file a truancy petition if within ten (10) business days, the parent, guardian, custodian has not contacted the Truancy Department to attend a review conference and the child has ten (10) unexcused absences within a school semester. The Truancy Department shall also recommend a filing if the following occurs:

- i. If the child's parent, guardian or custodian declines to meet with a Truancy

Coordinator;

- ii. If the Truancy Department, the child, and the child's parent, guardian or custodian cannot agree on a truancy remediation plan;
- iii. If the child continues to accumulate unexcused absences following the implementation of a truancy remediation plan developed at the attendance conference; or
- iv. If the child is in imminent danger of losing credit, being dropped for non-attendance, or being required to repeat a grade level as the result of the child's unexcused absences.

31-04-08. Contents

A. Adjudicative proceedings under this chapter shall be initiated by a petition in accordance with the general provisions of this code, including:

- i. Signed and filed by the Child welfare attorney or Truancy Director on behalf of the Tribe;
- ii. Certifying that, to the best of the Child welfare attorney's knowledge, information and belief, there are sufficient grounds to believe that the child is a truant; and
- iii. An affidavit certified by the Truancy Case coordinator:
 - 1. Certifying that the requirements of Informal Truancy Proceedings and Attendance Review conference was satisfied prior to the filing of the petition;
 - 2. All efforts taken by the Truancy Case Coordinator, the child, and the child's parent guardian or custodian, to resolve the matter prior to the filing of the petition; and
 - 3. Facts showing that one or more of the conditions set forth in 31-04-5 & 31-04-6 has been satisfied.

B. The truancy petition shall be filed within seven (7) days after the recommendation by the Truancy Case Coordinator.

31-04-09. Initial Hearing

A. The initial hearing shall be held within seven (7) days of the filing of the truancy petition.

B. The Children's Court shall advise the child and their parents, in language they will easily understand, of the following:

- i. The nature and purpose of the proceedings;

- ii. The contents of the truancy petition;
- iii. The possible consequences if the child is found to be a truant;
- iv. The right to counsel;
- v. The right to an adjudication;
- vi. The right to testify;
- vii. The right to introduce evidence on the child's own behalf; and
- viii. The right to appeal any final order of the Children's Court.

C. At the initial hearing, the Children's Court may enter a written order dismissing the truancy petition unless the Children's Court finds that the truancy petition sets forth reasonable grounds to believe the child is truant.

31-04-10. Adjudication

- A. The adjudication hearing shall be held within seven (7) days of the initial hearing.
- B. The Tribe shall bear the burden of showing, by clear and convincing evidence, that the child is a truant.
- C. The Children's Court shall conduct the adjudication hearing without a jury and, to the fullest extent practicable, in a language the child will easily understand.
- D. If the Respondents are represented by Counsel the Tribe shall provide the evidence to be used at the adjudicatory hearing, three (3) days before the adjudicatory hearing. Evidence shall include but is not limited to, any Truancy affidavits, school attendance reports, letters sent, and attendance contracts.
- E. At the adjudication hearing, the Children's Court may consider any evidence, including hearsay, which the Children's Court finds to be:
 - i. Relevant to the determination of whether the child is a truant; and
 - ii. Sufficiently reliable to satisfy the requirements of due process.
- F. If, upon hearing all evidence admitted at the adjudication hearing, the Children's Court finds that the child is truant, the Children's Court shall enter its finding in writing and either:
 - i. Proceed immediately to a disposition hearing; or

- ii. If the Children's Court finds good cause to continue the disposition hearing, set the matter for disposition within ten (10) days of the adjudication hearing.

G. If the Children's Court does not find that the child is a truant, it shall enter a written order dismissing the petition and releasing the child and their parent, guardian or custodian from any obligations or conditions previously imposed in connection with the truancy proceedings.

31-04-11. Disposition Hearing

A. The Truancy Case Coordinator shall prepare a written predisposition report setting forth recommendations concerning the disposition of the case, including a specific plan for services to meet the needs of the child and the child's parent, guardian or custodian. The predisposition report shall address, in a concise, factual, and unbiased manner, only those matters relevant to the disposition of the case.

B. The Children's Court shall conduct the disposition hearing for the purpose of determining:

- i. What services and resources are most likely to ensure regular school attendance by the child; and
- ii. The appropriate disposition of the matter.

C. At the disposition hearing, the Children's Court shall afford the parties the opportunity:

- i. To present documentary or testimonial evidence concerning the appropriate disposition of the matter;
- ii. Shall consider the predisposition report and recommendations prepared by the Truancy Case Coordinator, as well as any alternative predisposition report or recommendations prepared by the child or the child's parent, guardian or custodian; and
- iii. May consider any evidence, including hearsay, which it finds to be relevant, reliable, and helpful in making the determinations.

D. The Children's Court may enter written orders including any of the following, as best suited to the needs of the child and the child's parent, guardian or custodian:

- i. An order requiring the child to maintain regular attendance at the child's current school;
- ii. An order requiring the child to attend another public school, an alternative education program, a skill center, a dropout prevention program, or other public program which can provide appropriate educational services for the child;

iii. An order referring the child or the child's parent, guardian or custodian to educational, social, community, or tribal services or resources appropriate for addressing needs or issues which contributed to the child's habitual truancy;

iv. An order requiring the child and the child's parent, guardian or custodian to meet with the Truancy Department and participate in the development of a truancy remediation plan;

v. An order requiring the child's parent, guardian or custodian to participate in an educational or counseling program designed to contribute to their ability to care for and supervise the child, including but not limited to parenting classes;

vi. An order requiring the child to undergo a medical, psychological, or psychiatric evaluation;

vii. An order requiring the child to undergo medical, psychological, or psychiatric treatment, where such treatment is:

1. Recommended by a qualified medical, psychological, or psychiatric professional;
2. Necessary to address conditions which contributed to the child's habitual truancy; and
3. Any other order that the Court deems necessary to address the conditions which contributed to the child's habitual truancy.

E. Disposition orders entered by the Children's Court shall not include any out-of-home placement of the child.

31-04-12. Disposition Orders; Modification or Extension

A. The violation of a disposition order may be reported to the Truancy Case Coordinator, who may request the Child welfare attorney or the Truancy Department Director file a motion for modification.

B. Following a modification hearing conducted upon its own motion or the motion of any party, the Children's Court may modify or extend its disposition orders if it finds by clear and convincing evidence that such modification or extension is necessary to accomplish the purposes of the orders to be modified.

C. The modification hearing shall be held within ten (10) days of the filing of the motion for modification.

D. Where the modification hearing is to be held upon the motion of the Children's Court, notice of the modification hearing shall be accompanied by a statement of the specific facts upon which the motion for modification is based.

E. The Children's Court may consider:

- i. The extent to which the child and the child's parent, guardian or custodian have complied with any disposition orders previously entered by the Children's Court;
- ii. Evidence that the child has either maintained regular school attendance or continued to accumulate unexcused absences;
- iii. Changes in services or other recommendations relied upon by the Children's Court in entering the orders to be modified; or
- iv. Any other material changes in the circumstances of the child or the child's family, parent, guardian or custodian.

31-04-13. Disposition Review Hearings

A. At least once per month, the Children's Court shall conduct a hearing for the purpose of reviewing any disposition orders entered, and determining:

- i. Whether the child and the child's parent, guardian or custodian are in compliance with those disposition orders;
- ii. The extent to which those disposition orders have accomplished their intended purposes; and
- iii. Whether those disposition orders should:
 1. Continue in effect without modification or extension;
 2. Be terminated; or
 3. Be modified or extended.

B. An extension ordered in accordance with the provisions of this section shall not exceed three (3) months from the expiration of the prior order, not including summer vacation, and in no event shall the duration of a disposition order be extended, for longer than reasonably necessary to accomplish the purpose of the order; or past the date on which the child shall reach eighteen (18) years of age.

C. At any review hearing conducted pursuant to the provisions of this section:

- i. The child or child's parent, guardian, or custodian shall bear the burden of showing, by a preponderance of the evidence, compliance with any affirmative requirement set forth in the disposition orders entered by the Children's Court; and

- ii. The Tribe shall bear the burden of showing, by a preponderance of the evidence, that the child or the child's parent, guardian or custodian has engaged in any conduct prohibited by the disposition orders entered by the Children's Court.

31-04-14. Failure to Appear

A. In all truancy proceedings conducted pursuant to the provisions of this chapter, if a child sixteen (16) years of age or older fails to appear before the Children's Court after being so ordered:

- i. Upon a first or subsequent failure to appear, the Children's Court may:
 - 1. Issue a new summons; or
 - 2. Issue a warning to the child regarding the potential consequences of a subsequent failure to appear.
- ii. Upon a second or subsequent failure to appear, the Children's Court may:
 - 1. When feasible, issue an order directing a law enforcement officer to apprehend the child and bring the child immediately before the Children's Court; or
 - 2. Following a hearing on the matter, issue a written order imposing additional or modified supervisory conditions.
- iii. If a child under sixteen (16) years of age fails to appear before the Children's Court after being so ordered:
 - 1. If the Children's Court finds, based on the sworn testimony of the child's parent, guardian or custodian, that the child has willfully refused to appear, the Children's Court may proceed in accordance with the provisions of subsection (A)(i); or
 - 2. In the absence of such a finding, the Children's Court may proceed in accordance with the provisions of subsection (B).

B. If the child's parent, guardian or custodian fails to appear before the Children's Court after being so ordered, or fails to bring the child before the Children's Court after being so ordered:

- i. Upon a first or subsequent failure to appear, the Children's Court may:
 - 1. Issue a new summons; or
 - 2. Issue a warning to the child's parent, guardian or custodian regarding the potential consequences of a subsequent failure to appear.

C. Upon a second or subsequent failure to appear, the Children's Court may:

- i. Issue a bench warrant, directing that the child's parent, guardian or custodian be brought before the Children's Court to show cause why they should not be subject to sanctions in accordance with the provisions of this section; or
- ii. Absent a showing of good cause for the failure to appear, impose upon the child's parent, guardian or custodian a fine of up to \$100 (one hundred dollars) or equivalent community service hours.

D. Upon a third or subsequent failure to appear, the Children's Court may initiate proceedings for contempt against the child's parent, guardian or custodian. In exercising its authority, the Children's Court:

- i. Shall consider the ability of the child's parent, guardian or custodian to pay any fine to be imposed; or
- ii. Shall not impose a fine that would cause undue hardship for the child's parent, guardian, custodian or family, but may order community service.

31-04-15. Duration and Termination

A. Disposition orders entered by the Children's Court shall continue in force for not more than six (6) months, unless they are extended by the Court, preceding a motion and hearing for an extension, but no longer than one (1) year.

B. The Children's Court may terminate a disposition order prior to its expiration if, following a hearing conducted upon its own motion or the motion of any party, that the purposes of the disposition order have been accomplished.

C. The Children's Court shall enter an order terminating all disposition orders affecting the child, child's parent, guardian or custodian and discharging the child, child's parent, guardian or custodian from any further obligations in connection with the truancy proceedings, upon a showing by the child, child's parent, guardian or custodian that:

- i. At the end of the most recent school year, and following the child's most recent unexcused absence, the child has accumulated sixty (60) days of regular school attendance without another unexcused absence with the ability to remediate the unexcused absences through justifiable cause with the Truancy Department;
- ii. The child has graduated from high school, or equivalent program; or
- iii. When the child reaches eighteen (18) years of age.

31-05 FAMILIES IN NEED OF COURT-ORDERED SERVICES

31-05-01. Short Title; Purpose

- A. This Chapter may be cited as the "Family in Need of Court-Ordered Services Act".
- B. The Family in Need of Court-Ordered Services Act shall be interpreted and construed to effectuate the following expressed legislative purposes:
- i. through court intervention, to provide services for a family in need of services when voluntary services have been refused; and
 - ii. to recognize that many instances of truancy, runaway child, or a child refusing to reside with a parent and/ or guardian, are symptomatic of a family in need of services and that in some family situations the child and parent are unable to share a residence.

31-05-02. Definitions

As used in the Family in Need of Court Ordered Services Act:

- A. "Family in need of court-ordered services" means the child or the family has refused family services or the Department and/or the Truancy Department has exhausted appropriate and available family services and court intervention is necessary to provide family services to the child or family and it is a family:
- i. Whose child's behavior endangers the child's health, safety, education or well-being; or
 - ii. Whose child, is habitually truant through no fault of the parent, guardian or custodian; or
 - iii. Whose child refuses to return home and there is good cause to believe that the child will run away from home if forced to return to the parent, guardian or custodian; or
 - iv. In which the child's parent, guardian or custodian refuses to allow the child to return home due to family situations and a petition alleging neglect of the child is not in the child's best interests; or
- B. Whose child is:
- i. Alleged to be engaged in an act that would be designated as prostitution if committed by an adult; or
 - ii. A victim of human trafficking;
- C. "Family situations" as provided in this section include, substance abuse by a parent or guardian, and/or incidences of domestic violence;
- D. "family services" means services that address specific needs of the child or family;

E. "Voluntary placement agreement" means a written agreement between the Department and the parent or guardian of a child.

31-05-03. Petition; Endorsement of Petition

A petition regarding an alleged family in need of court-ordered services shall not be filed unless the Child welfare attorney, Social Services Director, or Truancy Department, determines and endorses upon the petition that filing is in the best interests of the child and family.

31-05-04. Petition; Allegations

A. A petition to initiate a proceeding regarding an alleged family in need of court-ordered services shall include the following allegations:

- i. Reason that the child or the family are in need of court-ordered family services;
- ii. That the child and the family participated in or refused to participate in a plan for family services and appropriate and available services; and
- iii. That court intervention is necessary to assist the Department in providing necessary services to the child and the family.

31-05-05. Adjudicatory Hearing; Time Limitations

B. An adjudicatory hearing for an alleged family in need of court-ordered services shall be commenced within sixty (60) days after the date of service on the respondent.

C. The Child welfare attorney, Social Services Director, or Truancy Department Director shall represent the Tribe at the adjudicatory hearing.

D. If the adjudicatory hearing is not commenced within the time limits specified in this section or within the period of any extension of those time limits, the petition shall be dismissed without prejudice.

31-05-06. Conduct of Hearings

A. All hearings regarding a family in need of court-ordered services shall be closed to the general public, subject to the following exceptions:

- i. The parties, the parties' counsel, witnesses and other persons approved by the court may be present at the hearings;
- ii. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings.

B. If the court finds that it is in the best interest of a child under fourteen years of age, the child may be excluded from a hearing under the Family in Need of Court-Ordered Services Act. A child fourteen years of age or older may be excluded from a hearing only if the court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding.

31-05-07. Findings; Dismissal; Dispositional Matters

A. The court shall determine if the allegations of the petition are admitted or denied by the parent or child. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court, after hearing all of the evidence regarding an alleged family in need of court-ordered services, shall make and record its findings.

B. If the court finds, on the basis of a valid admission of the allegations set forth in the petition or on the basis of clear and convincing evidence that is competent, material and relevant in nature, that the child is a child of a family in need of court-ordered services, the court may proceed at a postponed hearing to make disposition of the case within twenty (20) days of the adjudicatory hearing. If the court does not find that the child is a child of a family in need of court-ordered services, the court shall dismiss the petition.

C. In that part of the hearings regarding dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though not competent had it been offered during the part of the hearings regarding adjudicatory issues.

D. On the court's motion or motion of a party, the court may continue the hearing on the petition for a reasonable time to receive reports and other evidence regarding disposition. The court shall continue the hearing pending the receipt of the plan for family services if that document has not been prepared and received.

31-05-08. Plan for Family Services

A. Prior to holding a dispositional hearing, the court shall direct the Department or the Truancy Department to prepare a written family services plan for submission to the court.

B. The plan for family services shall contain the following information:

- i. A statement of the problem;
- ii. The needs of the child;
- iii. The needs of the family;
- iv. A description of the specific progress needed to be made by both the parent and the child, the reasons why the plan is likely to be useful, the availability of any proposed

services and the Department's overall plan for ensuring that the services will be delivered; and

v. When the child is an Indian child not eligible for membership with Isleta, contact shall be made with the child's Indian tribe for the purpose of consultation and exchange of information and the plan shall indicate the person contacted in the child's Indian tribe and the results of that contact.

C. A copy of the plan shall be provided by the Department to all parties at least five (5) days before the dispositional hearing.

31-05-09. Dispositional Judgment

A. At the conclusion of the dispositional hearing, the court shall set forth its findings on the following issues in the dispositional judgment:

- i. The child's adjustment to home, school and community;
- ii. Whether the child's educational needs are being met;
- iii. The mental and physical health of all individuals involved;
- iv. The availability of services recommended in the case plan; and
- v. The Department's efforts to work with the parent and child in the home and a description of the in-home treatment programs that the Department has considered and rejected.

B. When there is an adjudication regarding a family in need of court-ordered services, the court shall enter judgment and make any of the following dispositions:

- i. Permit the child to remain with the child's parent, guardian or custodian, subject to conditions and limitations, the court may prescribe;
- ii. Order the child to complete mental health treatment, or any other treatment or services to meet the child's specific needs;
- iii. Order the parents to undergo psychological assessments, attend substance abuse treatment programs, or any other services recommended by the Department and designed to remediate the issues that led to the family needing Court ordered services;
- iv. If the evidence indicates that the child's educational needs are not being met, the Truancy Department shall be directed to assess the child's needs within forty-five (45) days, attempt to meet the child's educational needs and document its efforts to meet the child's educational needs.

31-05-10. Dispositional Judgments; Time Limitations; Modification, Termination or Extension of Court Order

- A. The jurisdiction of the court for families in need of court ordered services shall not exceed 365 days from the Dispositional Hearing.
- B. At any time prior to expiration, a judgment for court ordered services may be modified, revoked or extended on motion by a party.
- C. When a child reaches eighteen years of age, all family in need of court-ordered services orders affecting the child then in force automatically terminate. The termination of the orders shall not disqualify a child who has turned eighteen (18), during a pending matter, from eligibility for voluntary continuing services or transitional services with the Department.

31-05-11. Dispositional Review Hearing

- A. Following a determination that a family is a family in need of court ordered services, the Children’s Court shall conduct regular hearings to assess the progress made in efforts to rehabilitate the child and family.
- B. The Dispositional Order shall be reviewed at least every ninety (90) days but may be reviewed as often as thirty (30) days upon motion of any party.

**31-06
CHILD ABUSE AND NEGLECT**

31-06-01. Short Title

This chapter may be cited as the “Abuse and Neglect Act”.

31-06-02. Definitions

As used in the Abuse and Neglect Act:

- A. "active efforts" means efforts that are affirmative, active, thorough and timely and that incorporates a finding of reasonable efforts;
- B. "abandonment" includes instances when the parent, without justifiable cause:
 - i. Left the child with others, including the other parent, relative or an agency, without provision for support and without communication and the parent is the sole physical and legal custodian of the child; or
 - ii. Has left the child with a parent, relative or guardian, without provision, support or communication and there is no indication of the parent’s willingness to assume the parental role for a period exceeding six (6) months;

- C. "abused child" means a child:
- i. Who has suffered or who is at risk of suffering physical abuse, serious emotional or psychological harm because of the action or inaction of the child's parent, guardian or custodian;
 - ii. Who has suffered physical abuse, serious emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;
 - iii. Who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;
 - iv. Whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or
 - v. Whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;
- D. "adoptive placement" means a permanent placement of an Indian child for adoption, including an action resulting in a final decree of adoption;
- E. "aggravated circumstances" includes those circumstances in which the parent, guardian or custodian has:
- i. Attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;
 - ii. Attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;
 - iii. Attempted, conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or
 - iv. Had parental rights over a sibling of the child terminated involuntarily;
- F. "case plan" means an individualized written plan for a child in an out-of-home placement, based on the unique needs of the child, that outlines all appropriate services to be provided, in efforts for reunification;
- G. "child custody proceeding" means an action for foster care placement, termination of parental rights, permanent guardianship or adoptive placement or an action pursuant to the Abuse and Neglect Act, or Families in Need of Court Ordered Services and includes investigations and other preliminary activities preceding the formal initiation of an action, but does not include:
- i. Delinquency proceedings; and

ii. Custodial proceedings or temporary guardianships.

H. "cultural compact" means an agreement that documents how an Isleta child placed in an adoptive or permanent guardianship home will continue to actively participate in the child's cultural learning and activities and that is entered into with the adoptive parents or permanent guardian(s) of the Indian child, which parents or guardians are not members of Isleta;

I. "educational decision maker" means an individual appointed by the children's court to attend school meetings and to make decisions about the child's education that a parent could make under law, including decisions about the child's educational setting, and the development and implementation of an individual education plan for the child;

J. "Family Centered Meetings" means structured, facilitated meetings that bring family members together so that, with the support of professionals and community resources, they can create a plan that ensures child safety and meets the family's needs;

K. "foster care placement" means:

i. An action pursuant to the Abuse and Neglect Act removing an Indian child from the child's parent, or guardian for temporary placement in a foster home or institution or the home of a guardian where the parent cannot have the child returned upon demand, but in which parental rights have not been terminated;

L. "great bodily harm" means an injury to a person that creates a high probability of death, that causes serious disfigurement or that results in permanent or protracted loss or impairment of the function of a member or organ of the body;

M. "neglected child" means a child:

i. Who has been abandoned by the child's parent, guardian or custodian;

ii. Who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the acts or omissions of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;

iii. Who has been physically or sexually abused by another person, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm; or

iv. Whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity;

N. "physical abuse" includes any case in which the child suffers strangulation or suffocation and any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

- i. There is not a justifiable explanation for the condition or death;
- ii. The explanation given for the condition is at variance with the degree or nature of the condition;
- iii. The explanation given for the death is at variance with the nature of the death; or
- iv. Circumstances indicate that the condition or death may not be the product of an accidental occurrence;

O. "protective supervision" means a legal status created by Court Order under which the child is permitted to remain in his/her home or is placed with an extended family member or other suitable person and supervision and assistance is provided by the Court, the Department, or any other agency designated by the Court;

P. "relative" means a person who is defined to be an extended family member by law or custom of an Indian child's tribe or, in the absence of such law or custom, means a person who is eighteen years of age or older and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, stepparent or godparent;

Q. "sexual abuse" includes criminal sexual contact, incest or criminal sexual penetration, or otherwise defined by the Isleta Tribal Law and Order Code;

R. "sexual exploitation" includes:

- i. Allowing, permitting or encouraging a child to engage in prostitution;
- ii. Allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing;
- iii. Filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law; or
- iv. Sex trafficking.

S. "sibling" means a brother or sister having one or both parents in common by birth or adoption;

T. "strangulation" means the unlawful touching or application of force to another person's neck or throat with intent to injure that person and in a manner whereby great bodily harm or death can be inflicted, the result of which impedes the person's normal breathing or blood circulation;

U. “substantiated” means, after a Social Services investigation it is more probable than not that the child has been abused and or neglected;

V. "suffocation" means the unlawful touching or application of force that blocks the nose or mouth of another person with intent to injure that person and in a manner whereby great bodily harm or death can be inflicted, the result of which impedes the person's normal breathing or blood circulation;

W. "transition plan" means a plan transitioning the child from one placement to another, which includes transitioning back to the child’s home;

X. “unsubstantiated” means an investigation disposition that determines that there is not sufficient evidence under Isleta law to conclude that the child has been abused or neglected.

31-06-03. Duty to Report Child Abuse and Neglect; Responsibility to Investigate Child Abuse or Neglect; Notification of Plan of Care

A. Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a school employee; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:

- i. Isleta Police Department;
- ii. The Department; or
- iii. A local law enforcement authority or Child Protective Services.

B. A law enforcement agency receiving the report whether in writing or made orally, shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the Department and shall transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the Department.

C. The recipient of a report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.

D. A law enforcement agency or the Department shall have access to any of the records pertaining to a child abuse or neglect case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in the Abuse and Neglect Act.

E. As used in this section, "school employee" includes employees of a school district or a public school.

31-06-04. Investigations

A. Reports alleging neglect or abuse shall be referred to the Department. The Department shall investigate any referral made to evaluate and provide services to a child or the family, relatives, or guardians of a child with respect to whom a report alleging neglect or abuse has been made.

B. During the investigation of a report alleging neglect or abuse, the matter may be referred to another appropriate agency and Family Centered Meetings may be conducted for the purpose of remediating safety risks to the child without filing a petition. A Social Services Intake Worker Investigator shall, at the initial time of contact with the party subject to the investigation, advise the party of the reports or allegations made, in a manner that is consistent with laws protecting the rights of the informant. The parties shall be advised of their basic rights and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The investigation shall be completed within a reasonable period of time from the date the report was made and a finding of substantiation or unsubstantiation shall be made.

C. For Indian children residing within the Pueblo who are enrolled or eligible for membership with another tribe and not a member or eligible for membership with Isleta, the Department shall make active efforts to notify the child's tribe and refer the case to that child's tribe's Social Services Department. In the event the child's tribe does not communicate with the Department in a timely manner pursuant to this code's timelines, Isleta law applies to the matter, except that the Pueblo shall not petition for suspension/termination of parental rights, or adoption of other tribal nations or other Pueblo's children.

D. After completion of the investigation on a neglect or abuse report, the Department shall either recommend or decline to recommend the filing of a petition.

E. If the Department recommends a filing of a petition and the child has been released to his/her parent or guardian, the Isleta Social Services Director or the Child welfare attorney shall file a petition within ten (10) days of the substantiation of abuse or neglect.

F. When a child is taken into protective custody, the Isleta Social Services Director or Child welfare attorney shall file a petition within three (3) days of removal.

G. An investigation shall be conducted for any report:

- i. Alleging sexual abuse of a child or serious or imminent harm to a child;
- ii. Indicating a child fatality; or

iii. Requiring law enforcement involvement, or as required by the Department's Standard Operating Procedures.

H. For each family, including the child who is the subject of a report to the Department and that child's relatives, caretakers or guardians, that receives services, the Department shall conduct a safety and risk assessment. Based on the results of the safety and risk assessment, the Department may establish a case plan and/or safety plan which may include but is not limited to, referrals for counseling, training or other services aimed at addressing the underlying causative factors jeopardizing the safety or well-being of the child who is the subject of a report to the Department. A family member, relative, caretaker or guardian may choose to accept or decline any services or programs offered; provided, however, that if a family member, relative, caretaker or guardian declines services, the Department may choose to file a petition under the Abuse or Neglect Act or the Family in Need of Court Ordered Services Act.

I. The Department shall make active efforts to identify extended family members and relatives able to be alternative care providers or to ensure the safety of the child.

J. The Department's active efforts to coordinate services to prevent taking the child into custody shall be documented in any subsequent action that may result in the child coming into the Department's custody.

31-06-05. Taking into Custody

A. A child may be held or taken into custody without a Court order:

i. By a Social Services Investigator, or a law enforcement officer when the officer or the investigator has evidence giving rise to reasonable grounds to believe that the child is abused or neglected and that there is an immediate threat to the child's safety; provided that the law enforcement officer contacts the Department to enable the Department to conduct an on-site safety assessment to determine whether it is appropriate to take the child into immediate custody, except that a child may be taken into custody by a law enforcement officer without a protective services assessment being conducted if:

1. The child's parent, guardian or custodian has attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;
2. The child has been abandoned;
3. The child is in need of emergency medical care; or
4. The Department is not available to conduct a safety assessment in a timely manner.

B. When a child is taken into custody by law enforcement, the Department is not compelled to place the child in an out-of-home placement and may release the child to the child's parent, guardian or custodian.

31-06-06. Release or Delivery from Custody

A. A person taking a child into custody shall, with all reasonable speed:

- i. Release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate;
- ii. Deliver the child to a relative, as long as the Department has approved the placement, or
- iii. In the case of a child who is believed to be suffering from a serious physical or mental condition or illness that requires prompt treatment or diagnosis, deliver the child to a medical facility. If a law enforcement officer delivers a child to a medical facility, the officer shall immediately notify the Department that the child has been placed in the Department's legal custody.

B. When an alleged neglected or abused child is delivered to the Department, a Department caseworker shall review the need for placing the child in custody and shall release the child from custody unless custody is appropriate due to identifiable safety concerns and immediate risk of harm to the child, or has been ordered by the court. When a child is delivered to a medical facility, a Department caseworker shall review the need for retention of custody within a reasonable time after delivery of the child to the facility and shall release the child from custody unless custody is appropriate or has been ordered by the court.

C. If a child is placed in the legal custody of the Department and is not released to the child's parent, guardian or custodian, the Department shall give written notice thereof as soon as possible, and in no case later than twenty-four (24) hours, to the child's parent, guardian or custodian together with a statement of the reason for taking the child into custody.

D. Active efforts shall be made to prevent or eliminate the need for removing the child from the child's home, with the paramount concern being the child's health and safety. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian, unless the Department files a petition within seventy-two (72) hours from the date that the child was taken into custody identifying the safety concerns and immediate risk of harm to the child resulting in removal and the continued need for out-of-home placement, or has received an extension by order of the Court.

E. The Department shall release the child at any time within the seventy-two (72) hour period after the child was taken into custody if it is determined by the Department that there are currently no safety concerns or immediate risk of harm to the child in the home, or if release has been ordered by the court.

31-06-07. Placement Preferences

A. Unless a child alleged to be neglected or abused is also alleged or adjudicated delinquent, there shall be a preference that the child be placed in the home of a relative of the child when a relative is available to provide foster care; provided that the relative signs a sworn statement that the relative will not return the child to or allow unsupervised visits with the parent, guardian or custodian who is alleged to have committed the abuse or neglect, unless otherwise directed by the Department or the court.

B. The Department shall make active efforts to locate a relative of the child to provide foster care. If a relative is not available to provide foster care, the child shall be placed with:

- i. A member of the Pueblo of Isleta;
- ii. An Indian foster care home approved by the Department;
- iii. A foster care home, approved and specified by the Pueblo; or
- iv. an institution for children approved by the Pueblo or operated by an Indian organization that has a program suitable to meet the child's needs.

31-06-08. Change in Placement

A. When the child's placement is changed and not specified in a transition plan submitted to the Court, written notice of the factual grounds supporting the change in placement shall be sent to the child's guardian ad litem or attorney, all parties, the child's foster parents and the court five (5) days prior to the placement change, unless an emergency situation requires moving the child prior to sending notice.

B. When a child's placement is changed without prior notice as provided for in Subsection A of this section, written notice shall be sent to the child's guardian ad litem or attorney, all parties, the child's foster parents and the court within three (3) days after the placement change.

31-06-09. Use Immunity

A. At any stage of a proceeding under the Abuse and Neglect Act, the Child welfare attorney or other counsel may apply for use immunity for a respondent for in-court testimony. The in-court testimony of an immunized respondent shall not be used against that respondent in a criminal prosecution; provided, however, that the respondent may be prosecuted for perjury that occurs during the respondent's testimony in children's court.

B. At any stage of a proceeding under the Abuse and Neglect Act, Child welfare attorney or other counsel may apply for use immunity for any records, documents or other physical objects produced by the immunized respondent in that children's court proceeding, production of which was compelled by a court order.

C. At any stage of a proceeding under the Abuse and Neglect Act, the Child welfare attorney or other counsel may apply for use immunity for a respondent for any statement that a respondent makes in the course of a court-ordered psychological evaluation or treatment program to the professional designated by the Department in furtherance of the court's order. Such immunity shall attach only to those statements made during the course of the actual evaluation or treatment and specifically does not attach to statements made to other Department employees, agents or other representatives in the course of the investigation of alleged child abuse or neglect.

D. Any other information available to the professional designated by the Department to perform the court-ordered evaluation or treatment shall not be the subject of any application or order for immunity.

E. All immunized statements referred to in Subsection C that are subsequently reduced to writing shall be deleted before any report is released to law enforcement officers, prosecutor or district attorneys.

F. The Child welfare attorney or other counsel shall request a hearing on any application for immunity and shall give at least forty-eight hours' notice to all parties and to the prosecutor, or district attorney for the county in which the alleged abuse or neglect occurred. The prosecutor or district attorney shall have standing to object to the order for immunity.

31-06-10. Contempt Power

A. At any stage of a proceeding under the Abuse and Neglect Act, the court shall have the power and authority to issue orders to compel the appearance of witnesses, the giving of testimony and production of evidence by witnesses, including any party. Production of evidence includes an order to a respondent to undergo a psychological diagnostic evaluation and treatment.

B. Failure or refusal to obey the court's order may be punished by the court as contempt. A claim that giving testimony or producing evidence might tend to incriminate the person who is the subject of the order shall not excuse the person from complying with the court's order.

31-06-11. Petition; Form and Content

A. In a petition initiating a Child Abuse or Neglect proceeding, the Department Director or Child welfare attorney shall include any relevant requirements set forth in Section 31-01-10, including:

- i. A statement as to whether the child who is the subject of the child custody proceeding is an Indian child;
- ii. The Indian child's tribe;
- iii. The tribal affiliations of the Indian child's parents;

- iv. The causal relationship between the parents or guardians' actions and the abuse and/or neglect;
- v. Active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and that these efforts were proven to be unsuccessful and the reasons these efforts were unsuccessful, if known;
- vi. Active efforts made to comply with the placement preferences;
- vii. If requesting removal from the child's home, a statement as to whether remaining in the home is against the child's welfare and safety; and
- viii. Attached a sworn affidavit from a Social Services Intake Worker Investigator or any other individual involved in the investigation to establish probable cause of the Abuse and/or Neglect.

B. A petition alleging neglect or abuse shall not be filed unless the Child welfare attorney or the Social Services Director has determined and endorsed upon the petition that the filing of the petition is in the best interests of the child.

31-06-12. Ex-Parte Custody Orders

A. At the time a petition is filed or any time thereafter, the Children's Court may issue an ex-parte custody order upon a sworn written statement of facts showing probable cause exists to believe that the child is abused or neglected and that custody under the criteria set forth in Section 31-06-5 is necessary.

B. The ex-parte custody order shall be served on the respondent by a person authorized to serve arrest warrants and shall direct the Department to take custody of the child.

31-06-13. Summons; Content

In addition to the requirements set forth in the Isleta Rules of Civil Procedure, in abuse and neglect proceedings, the summons shall clearly state that the proceeding could ultimately result in termination of the respondents' parental rights.

31-06-14. Custody Hearings; Time Limitations; Notice; Probable Cause

A. When a child alleged to be neglected or abused has been placed in the legal custody of the Department or the Department has petitioned the court for temporary custody, a custody hearing shall be held within ten (10) days from the date the petition is filed to determine if the child should remain in or be placed in the Department's custody pending adjudication. Upon written request of the respondent, the hearing may be held earlier, but in no event shall the hearing be held sooner than two days after the date the petition was filed.

- B. If the child has been released to his/her parent or guardian, the Court shall conduct an initial appearance within twenty (20) days of the filing of the Petition.
- C. The parent, guardian or custodian of the child alleged to be abused or neglected shall be given reasonable notice of the time and place of the custody hearing.
- D. The Social Services Worker, or the Child welfare attorney shall read onto the record the allegations stated in the Petition in open Court.
- E. The Court shall advise the parents of the right to have counsel, the right to an adjudicatory hearing, and that the proceedings could ultimately lead to a termination of their parental rights.
- F. The Children's Court shall allow the parent to deny or admit the allegations.
- G. If the parents admit the allegations, a date for a dispositional hearing shall be set no later than twenty (20) days following the Custody Hearing.
- H. If the parents deny the allegations, an adjudicatory hearing shall be held no later than sixty (60) days following the Initial Hearing, unless a continuance is granted.
- I. At the custody hearing, the court shall return legal custody of the child to the child's parent, guardian or custodian unless probable cause exists to believe that:
- i. The child is suffering from an illness or injury, and the parent, guardian or custodian is not providing adequate care for the child;
 - ii. The child is in immediate danger from the child's surroundings and removal from those surroundings is necessary for the child's safety or well-being;
 - iii. The child will be subject to injury by others if not placed in the custody of the Department; or
 - iv. There has been an abandonment of the child by the child's parent, guardian or custodian.
- J. The court shall also make a finding that continued custody by the child's parent, or guardian is likely to result in serious emotional or physical damage to the child and that removal from the child's home is in the best interest of the child.
- K. At the conclusion of the custody hearing, if the court determines that probable cause exists that the child is abused or neglected, the court may:
- i. Return legal custody of the child to the child's parent, guardian or custodian upon such conditions as will reasonably ensure the safety and well-being of the child, including protective supervision or maintenance at home by the Department or participation in

programs or services aimed at addressing the underlying causative factors that impact the safety or well-being of the child; or

ii. Award legal custody of the child to the Department.

L. Active efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. When the Department determines that the home of an adult relative of the child meets all relevant child protection standards and placement in the home would be in the best interest of the child, the Department shall give a preference to placement of the child in that home. The Department shall make active efforts to conduct home studies on appropriate relatives who express an interest in providing placement for the child.

M. At the conclusion of the custody hearing, if the court determines that probable cause does not exist that the child is either abused or neglected, the court shall dismiss the petition without prejudice.

N. If the court determines there is probable cause that a child has been either abused or neglected, the court shall:

i. Include that the child's continued custody by the child's parent, or guardian is likely to result in serious emotional or physical damage to the child and that removal from the child's home is in the best interest of the child. The order shall include language which describes the circumstance in the home the child/youth is being removed from;

ii. Make a finding of active efforts; and

iii. Not make findings of futility or aggravated circumstances in the child custody proceeding.

31-06-15. Consent Decree; Purpose; Conference

A. A Consent Decree is defined as providing opportunities for parents who would otherwise face formal processing in the court system so that they can avoid an adjudication and a finding of abuse and neglect on their record. This allows the parents and opportunity to engage in an alternative program, including treatment when appropriate.

B. At any time after the filing of an action pursuant to this Code and before the entry of Judgment, the Court may suspend the action and permit the parties to enter into a Consent Decree. The Court may Order any provision it deems appropriate to fulfill the intent of the code and the best interest of the child.

C. Upon an admission by the respondent as to one or all of the allegations contained within a petition, the court may enter a consent decree at the recommendation of the Department, that places the respondent under Department supervision for a period not to exceed six (6) months under conditions approved by the court. As part of a consent decree, the parties may agree to an extension of the consent decree not to exceed an additional six (6) months.

D. The Child welfare attorney or the Isleta Social Services Director may move the court for an order extending the original consent decree for a period not to exceed six (6) months from the expiration of the original decree. The motion for extension shall be filed prior to the expiration of the original decree. If the respondent objects to the extension, the court shall hold a hearing to determine if the extension is in the best interests of the respondent, the child and the public.

E. If, prior to discharge by the Department or the expiration of the consent decree, whichever occurs earlier, the respondent allegedly fails to fulfill the terms of the decree, the Child welfare attorney or Isleta Social Services Director may file a petition to revoke the consent decree. If the Consent Decree is revoked, the matter shall return to Court in the same procedural posture in which it was suspended.

F. Upon a finding that the respondent violated the terms of their consent decree, the respondent shall be subject to any disposition that would have been subject to upon an initial finding of abuse and neglect and any other disposition the court sees fit, including a finding of abuse and neglect on the respondents' record.

G. Prior to the adjudicatory hearing, all parties to the hearing shall attend a mandatory meeting and attempt to settle issues attendant to the adjudicatory hearing and develop a proposed treatment plan that serves the child's best interest.

H. Before the adjudicatory hearing the court shall conduct a status conference to address specific matters. The court must consider the following:

- i. Identification of the parties to the proceeding;
- ii. Whether paternity has been established or efforts made to establish paternity, including the identity and location of a missing parent;
- iii. Whether relatives have been identified and notified as potential resources for placement or support;
- iv. Whether all summons, service of process, and notice requirements have been met;
- v. Whether the petition has been properly verified and invokes jurisdiction;
- vi. Any pretrial motions, including motions for appointment of a GAL, for discovery, to amend the petition, or for a continuance;
- vii. Whether a consent decree was offered and whether the consent decree was accepted by the Respondents; and
- viii. Any other issue that can properly be addressed as a preliminary matter.

I. At the hearing, the parties may enter into a consent decree.

31-06-16. Adjudicatory Hearings; Time Limitations

- A. The adjudicatory hearing in a neglect or abuse proceeding shall be commenced within sixty (60) days after the initial hearing.
- B. The Child welfare attorney or the Isleta Social Services Director shall represent the Pueblo at the adjudicatory hearing.
- C. When the adjudicatory hearing on any petition is not commenced within the time period specified in Subsection A of this section or within the period of any extension granted, the petition shall be dismissed without prejudice.
- D. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court, after hearing all of the evidence bearing on the allegations of neglect or abuse, shall make and record its findings on whether the child is a neglected child, an abused child or both.
- E. For a foster care placement at adjudication, the evidence shall show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child custody proceeding.
- F. Without a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior shall not by itself constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child.
- G. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of clear and convincing evidence, competent, material and relevant in nature, that the child is neglected or abused, the court shall enter an order finding that the child is neglected or abused and may proceed at a postponed hearing to make disposition of the case. If the court does not find that the child is neglected or abused, the court shall dismiss the petition and may order further investigation by the Department.
- H. On the court's motion or that of a party, the court may continue the hearing on the petition for a period not to exceed thirty days to receive reports and other evidence in connection with disposition. The court shall continue the hearing pending the receipt of the predisposition report if that document has not been prepared and received. During any continuances under this subsection, the court shall make an appropriate order for legal custody.

31-06-17. Parental Responsibility

- A. The court shall order the parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay if a child is adjudicated to be an abused or

neglected child and the court orders the child placed with an agency or individual other than the parent.

B. The court may enforce any of its orders issued pursuant to this section by use of its contempt power.

31-06-18. Conduct of Hearings

A. All abuse and neglect hearings shall be closed to the general public.

B. Only the parties, their counsel, witnesses and other persons approved by the court may be present at a closed hearing. The foster parent, or relative providing care for the child shall be given notice and an opportunity to be heard at the dispositional phase. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings. Any party may invoke the rule of exclusion during any proceeding and provide the court with information as to why the request is being made.

C. If the court finds that it is in the best interest of a child under fourteen years of age, the child may be excluded from a hearing under the Abuse and Neglect Act. A child fourteen years of age or older may be excluded from a hearing only if the court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding.

31-06-19. Neglect or Abuse Predisposition Studies, Reports and Examinations

A. Prior to holding a dispositional hearing, the court shall direct that a predisposition report be submitted in writing to the court by the Department.

B. The predisposition report required pursuant to Subsection A of this section shall contain the following information:

i. A statement of the specific reasons for intervention by the Department or for placing the child under the Department's protective custody and a statement of the parent's ability to care for the child in the parent's home without causing harm to the child;

ii. A statement of how an intervention plan is designed to achieve placement of the child in the least restrictive setting available, consistent with the best interests and special needs of the child, including a statement of the likely harm the child may suffer as a result of being removed from the parent's home, emotional harm that may result due to separation from the child's parents, and a statement of how the intervention plan is designed to place the child in close proximity to the parent's home without causing harm to the child due to separation from parents, siblings or any other person who may significantly affect the child's best interest;

iii. The wishes of the child as to the child's custodian;

iv. A statement of the efforts the Department has made to identify and locate all grandparents and other relatives and to conduct home studies on any appropriate relative expressing an interest in providing care for the child, and a statement as to whether the child has a family member who, subsequent to study by the Department, is determined to be qualified to care for the child;

v. A description of services offered to the child, the child's family and the child's foster care family and a summary of active efforts made to prevent removal of the child from the child's family or active efforts made to reunite the child with the child's family;

vi. A description of the home or facility in which the child is placed and the appropriateness of the child's placement;

vii. The results of any diagnostic examination or evaluation ordered at the custody hearing;

viii. A statement of the child's medical and educational background;

ix. A case plan that sets forth steps to ensure that the child's physical, medical, cultural, psychological and educational needs are met and that sets forth services to be provided to the child and the child's parents to facilitate permanent placement of the child in the parent's home;

x. A case plan that sets forth steps to ensure that the child's educational needs are met and, for a child fourteen years of age or older, a case plan that specifically sets forth the child's educational and post-secondary goals; and

xi. A description of the child's foster or relative care placement and whether it is appropriate in terms of the educational setting and proximity to the school the child was enrolled in at the time of the placement, including plans for travel for the child to remain in the school in which the child was enrolled at the time of placement, if reasonable and in the child's best interest.

C. A copy of the predisposition report shall be provided by the Department to counsel for all parties five (5) days before the dispositional hearing.

D. If the child is an adjudicated abused child, any temporary custody orders shall remain in effect until the court has received and considered the predisposition report at the dispositional hearing.

31-06-20. Dispositional Hearing

A. The dispositional hearing shall be commenced within twenty (20) days after the conclusion of the adjudicatory hearing. At the conclusion of the dispositional hearing, the court shall make and include in the dispositional judgment its findings on the following:

- i. The interaction and interrelationship of the child with the child's parent, siblings and any other person who may significantly affect the child's best interest;
 - ii. The child's adjustment to the child's home, school and community;
 - iii. Whether active efforts have been made by the Department to identify, locate and give notice to all grandparents and other relatives and to conduct home studies on any appropriate relative who expresses an interest in providing care for the child. If the court finds that active efforts in these areas have not been made, the court may make supplemental orders as necessary and may reconsider the matter at the initial judicial review and subsequent periodic review hearings;
 - iv. The availability of services recommended in the case plan prepared as a part of the predisposition report;
 - v. The ability of the parent to care for the child in the home so that no harm will result to the child;
 - vi. Whether active efforts were made by the Department to prevent removal of child from the home prior to placement in substitute care and whether active efforts were made to attempt reunification of the child with the natural parent; and
 - vii. Whether active efforts were made by the Department to place siblings in custody together, unless such joint placement would be contrary to the safety or well-being of any of the siblings in custody, and whether any siblings not jointly placed have been provided reasonable visitation or other ongoing interaction, unless visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.
- B. If a child is found to be neglected or abused, the court may enter its judgment making any of the following dispositions to protect the welfare of the child:
- i. Permit the child to remain with the child's parent, guardian or custodian, subject to the protective supervision of the Department;
 - ii. Place the child under protective supervision and legal custody of the Department; or
 - iii. Transfer legal custody of the child to the non-offending parent, if it is found to be in the child's best interest.
- C. If a child is found to be neglected or abused, in its dispositional judgment the court shall also order the Department to implement and the child's parent, guardian or custodian to cooperate with any case plan approved by the court. Active efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety.
- D. Any parent, guardian or custodian of a child who is placed in the legal custody of the Department pursuant to Subsection B of this section shall have reasonable rights of visitation

with the child as determined by the Department, unless the court finds that the best interests of the child preclude any visitation.

E. The court may order visitation as recommended by the Department between a child placed in the custody of the Department and the child's siblings, if the court finds the visitation to be in the child's best interest.

F. Unless a child found to be neglected or abused is also found to be delinquent, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children.

G. Prior to a child being placed in the legal custody or protective supervision of the Department, the Department shall be provided with reasonable oral or written notification and an opportunity to be heard.

31-06-21. Appointment or Change of Educational Decision Maker

A. In all matters involving children alleged by the Department to be abused or neglected, including proceedings to terminate parental rights, the children's court shall appoint an educational decision maker in every case.

B. The children's court shall appoint an educational decision maker at the custody hearing; provided that the children's court:

- i. May change the appointment of an educational decision maker upon motion of a party at any stage of the proceedings; and
- ii. Shall review at each subsequent stage of the proceedings whether to continue or change the appointment of an educational decision maker for the child.

C. The children's court shall appoint a respondent as the child's educational decision maker, unless the children's court determines that doing so would be contrary to the best interests of the child. If the children's court determines that no respondent should be appointed as the child's educational decision maker, the children's court shall appoint another qualified individual, typically a relative recommended by the Department, taking into account the following:

- i. Whether the individual knows the child and is willing to accept responsibility for making educational decisions;
- ii. Whether the individual has any personal or professional interests that conflict with the interests of the child; and
- iii. Whether the individual is permitted to make all necessary educational decisions for the child, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act.

31-06-22. Dispositional Review Hearings

- A. Dispositional Review Hearings shall be held at least every ninety (90) days of the last hearing, but may be reviewed sooner by motion of one of the parties.
- B. Following the Dispositional Hearing, the Children's Court shall conduct regular hearings to assess the progress made in efforts to rehabilitate the family, if there is a continuing need for out of home placement, and whether the current placement of the child is suitable and meeting their needs.
- C. The parties shall demonstrate to the court efforts made to implement the case plan approved by the court in its dispositional order.
- D. The court shall determine the extent to which the case plan has been implemented and make supplemental orders as necessary to ensure compliance with the case plan and the safety of the child.

31-06-23. Limitations on Dispositional Judgments; Modification, Termination or Extension of Court Orders

- A. A judgment vesting legal custody of a child in an agency shall remain in force for an indeterminate period not exceeding two years from the date entered, unless the following circumstances have been met:
 - i. Respondents have agreed to a waiver of time limitations and the Department believes it is in the best interest to request an extension;
 - ii. The Court finds that the extension is necessary to safeguard the welfare of the child;
or
 - iii. In circumstances where the child requires specialized medical care that can only be facilitated by an agency specialized in providing necessary care designed to address the child's complex medical needs.
- B. Prior to the expiration of a judgment transferring legal custody to an agency, the court may extend the judgment for additional periods of one year.
- C. A judgment vesting legal custody of a child in the child's parent or a permanent guardian shall remain in force for an indeterminate period from the date entered until terminated by court order or until the child is emancipated or reaches the age of majority.
- D. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by any party, including the child by and through the child's guardian ad litem.

E. When a child reaches eighteen years of age, all neglect and abuse orders affecting the child then in force automatically terminate, however this shall not prevent the Department from continuing to provide voluntary services to the child or transitional services.

31-06-24. Pre-Permanency Planning

A. A permanency hearing shall be commenced within six months of the initial judicial review of a child's dispositional order or within twelve months of a child entering foster care, whichever occurs first. Prior to the initial permanency hearing:

- i. All parties to the hearing shall attend a mandatory meeting and attempt to settle issues attendant to the permanency hearing and develop a proposed case plan that serves the child's best interest;
- ii. The Department shall submit a progress report to all parties four (4) days before the permanency hearing; and
- iii. The Department shall, at the permanency hearing report its findings and recommendations to the court.

31-06-25. Permanency Hearings; Permanency Review Hearings

A. At the permanency hearing, all parties shall have the opportunity to present evidence and to cross-examine witnesses. At the conclusion of the permanency hearing, the court shall order one of the following permanency plans for the child:

- i. Reunification;
- ii. Placement with the child placed in the home of a fit and willing relative or a person who will be the child's permanent guardian;
- iii. Placement in the legal custody of the Department under a planned permanent living arrangement, provided that there is substantial evidence that none of the above plans is appropriate for the child; or
- iv. Tribal Customary Adoption.

B. If the court adopts a permanency plan of reunification, the court shall adopt a plan for transitioning the child home within a reasonable period depending on the facts and circumstances of the case, and the progress of the parent's or guardian, and schedule a permanency review hearing within three months. If the child is reunified, the subsequent hearing may be vacated.

C. The court may admit testimony by any person given notice of the permanency hearing who has information about the status of the child or the status of the case plan. All testimony shall be subject to cross-examination.

31-06-26. Permanent Guardianship of a Child

A. In proceedings for permanent guardianship, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child. Permanent guardianship vests in the guardian all rights and responsibilities of a parent, other than those rights and responsibilities of the natural or adoptive parent, if any, set forth in the decree of permanent guardianship.

B. Any adult, including a relative or foster parent, may be considered as a permanent guardian, provided that the Department grants consent to the guardianship if the child is in the legal custody of the Department.

C. The court may establish a permanent guardianship between a child and the guardian when the prospective guardianship is in the child's best interest and when:

- i. The child has been adjudicated as an abused or neglected child;
- ii. The Department has made active efforts to reunite the parent and child and further efforts by the Department would be unproductive;
- iii. Reunification of the parent and child is not in the child's best interests because the parent continues to be unwilling or unable to properly care for the child;
- iv. The likelihood of the child being adopted is remote or it is established that suspension or termination of parental rights is not in the child's best interest;
- v. The child has a strong attachment to the proposed guardian (and has been consulted about the guardianship if 14 years of age or older),
- vi. The guardian has a strong commitment to permanently caring for the child; and
- vii. Whether the child was eligible for foster care maintenance payments for six consecutive months while living in the home of the guardian (whether or not the child actually received payments).

31-06-27. Permanent Guardianship; Procedure

A. A motion for permanent guardianship may be filed by any party, but primarily by the Department.

B. A motion for permanent guardianship shall set forth:

- i. the date, place of birth and marital status of the child, if known;
- ii. the facts and circumstances supporting the grounds for permanent guardianship;

- iii. the name and address of the prospective guardian and a statement that the person agrees to accept the duties and responsibilities of guardianship;
 - iv. the basis for the court's jurisdiction; and
 - v. the relationship of the child to the petitioner and the prospective guardian;
- C. If the motion is not filed by the prospective guardian, the motion shall be verified by the prospective guardian.
- D. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on any parent who has not previously been made a party to the proceeding, the parents of the child, foster parents with whom the child is residing, or relative providing care for the child with whom the child has resided for six months, the child's custodian, the Department, any person appointed to represent any party, including the child's guardian ad litem, and any other person the court orders provided with notice. Service shall be in accordance with the Isleta Civil Rules of Procedure for the service of motions. Further notice shall not be required to a parent who has been provided notice previously and who failed to make an appearance.
- E. The grounds for permanent guardianship shall be proved by clear and convincing evidence.
- F. A judgment of the court vesting permanent guardianship with an individual divests the biological or adoptive parent of legal custody or physical guardianship of the child, but is not a termination of the parent's rights, rather it is a suspension of parental rights. A child's inheritance rights from and through the child's biological or adoptive parents are not affected by this proceeding.
- G. Those rights and duties remaining with a parent and after legal custody or guardianship or both have been vested in another person or agency, including but not limited to, the responsibility for support, the rights to consent to adoption and the right to reasonable visitation unless restricted by court order.
- H. Upon a finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings or other relatives of the child and any other provision necessary to rehabilitate the child or provide for the child's continuing safety and well-being.
- I. When a permanent guardianship motion is granted by the Court, the case shall be closed and the Court shall issue in its final order the reasoning for the decision and the ability for the parent(s) to petition the Court for custody of their child(ren) in the event they can show a significant change of circumstances.
- J. The court shall retain jurisdiction to enforce its judgment of permanent guardianship.
- K. Any party may make a motion for revocation of the final order granting permanent guardianship when there is a significant change of circumstances, including:

i. The child's parent is able and willing to properly care for the child, and the child's parent(s) are able to provide evidence to the Court that they have successfully completed case plan recommendations in prior orders of the Court in The Abuse and Neglect case; or

ii. The child's guardian is unable to properly care for the child.

L. The court may revoke the order granting permanent guardianship when a significant change of circumstances has been proven by clear and convincing evidence and it is in the child's best interests to revoke the final order granting permanent guardianship.

M. The court may appoint a guardian ad litem for the child in all proceedings for the revocation of permanent guardianship if the child is under the age of fourteen. The court may appoint an attorney for the child in all proceedings for the revocation of permanent guardianship if the child is fourteen years of age or older at the inception of the proceedings.

N. Permanent Guardianship is preferred as opposed to termination of parental rights.

O. Cultural Compacts shall be required in permanent guardianships if the permanent guardian is not a member of the Pueblo of Isleta.

P. A case ending in Permanent Guardianship shall not prevent parents from seeking services from the Department and shall not prevent the Department from offering services to the parents and family.

31-07

SUSPENSION OR TERMINATION OF PARENTAL RIGHTS

31-07-01. Purpose

A. It is the intent of this chapter that suspension of parental rights is clearly preferred as being consistent with the Pueblo's best interest. Suspension of parental rights better preserve the connection between the child and his/her family, clan, the Pueblo, customs and traditions while providing the sense of permanency that children need and deserve.

B. It is only in extremely rare and unusual circumstances that termination of parental rights prior to customary adoption may be permissible. Termination of parental rights prior to customary adoption requires that a showing beyond a reasonable doubt that it is the only option that is in the best interests of the child and the Pueblo and that it is not in conflict with custom, tradition or Isleta law.

31-07-02. Definitions

A. "Best Interests of the [Pueblo]" is defined as a variety of factors including but not limited to the ability of the Pueblo and its members to provide for the child; the ability of the Pueblo and its members to provide for the continuation of the Pueblo's culture, language, history, religion, traditions and values through its children if those children are taken away and not taught these

things throughout their daily lives. The ability of the Pueblo to continue as a viable cultural entity will be hindered by the loss of its children. Every child is a gift from the creator and is viewed by the Pueblo as crucial to the future of the Pueblo as a whole;

B. “Birth Parent” is defined as the biological parent;

C. “Family member” means a person who is defined to be a relative by law, custom or tradition of the Pueblo or, in the absence of such law or custom, means a person who is eighteen years of age or older and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, stepparent or godparent; the term is used interchangeably with “relative;”

D. “Final order suspending parental rights” means a final Court order which permanently suspends the rights of a biological parent to provide for the care, custody and control of their child. Said order may establish the parameters of contact between [a] birth parent and the child if said contact is in the child’s best interests. The order shall indicate what relationship, such as visitation, the child maintains with his/her biological parent(s), extended family, clan and the Pueblo;

E. “Member” (or “Pueblo of Isleta member”) is defined as any individual who is descended from a biological parent who is an Isleta Pueblo member or enrolled member or otherwise recognized by the Pueblo as a member. In the case of a child, it is a child whose biological parent(s) or grandparents are Pueblo members, including those enrolled in the Pueblo of Isleta;

F. “Suspension of parental rights” is defined as the permanent suspension of the rights of biological parents to provide for the care, custody and control of their child;

G. “Termination of parental rights” is defined as the permanent ending or termination of any rights of a biological parent with respect to a child.

31-07-03. Rights of Parties

A. In addition to any other rights afforded under the Pueblo of Isleta Constitution, petitioners, and other parties have the following rights:

i. A biological parent has the right to refuse services provided by any social services agency, however, their refusal to accept services may have a significant impact on their ability to have contact with their child;

ii. The petitioner and respondent have the right to have reasonable notice and to attend any hearing arising out of the filing of a petition for suspension of parental rights pursuant to the Adoption Act;

iii. The biological parents and the petitioner have the right to be represented by counsel at their own expense at all proceedings;

- iv. The biological parents and the petitioner have the right to summon and cross-examine witnesses; and
- v. The biological parents have the right to seek independent medical, psychological or psychiatric evaluations of at their own expense.

31-07-04. Petition to Suspend or Terminate Parental Rights

A. An action to suspend or terminate a parent and child relationship is started by filing a petition in the Court. A petition may be filed by:

- i. One or both parents who voluntarily request that the parent and child relationship be suspended or terminated, unless it is determined that such a request is made to avoid support obligations;
- ii. One parent requesting that the parent and child relationship between the child and the other parent be suspended or terminated;
- iii. The Department; or
- iv. A permanent legal guardian.

B. The petition shall include:

- i. The name, address (physical and mailing), and telephone number of the petitioner and the petitioner's relationship, if any, to the child;
- ii. A statement detailing the specific reasons why an order for the suspension of parental rights of the parent(s) is in the best interests of the child and the Pueblo, and how it meets the criteria set forth in this Act;
- iii. A statement detailing how the suspension will lead to a permanent relationship for the child in customary adoption or permanent guardianship that is in accordance with Pueblo preferences, and how connections will be maintained and enhanced with extended family, and if the adoptive parent is not a member, with the Pueblo;
- iv. A statement as to basis for the request for the suspension of parental rights supported by medical, psychiatric, Social Services Intake Investigator/Child Protection Worker, family member and/or psychological reports or testimony;
- v. The name, address (physical and mailing), telephone number and age and birth dates (if known) of the child's parent(s) whose parental rights are to be suspended or terminated;
- vi. In cases of a minor parent, the names and addresses (physical and mailing) of a minor parent's parent(s) or guardians;

vii. The names and addresses (physical and mailing) of the person(s) or entity having legal custody or guardianship of the child or acting in the place of the parent.

viii. The name(s), address(es), and telephone number(s) of any other relatives who may have an interest in the care, custody and control of the child;

ix. A statement that no similar action is pending in a state or other court of an Indian tribe having jurisdiction over the child; and

x. It should be recalled that suspension of parental rights is preferred under this Act as being generally consistent with Isleta traditions, but if termination of parental rights is sought, a detailed statement as to why it is in the best interests of the child and the Pueblo that the biological rights of the parent(s) be terminated as opposed to suspended and why termination of parental rights is a better option for child and the Pueblo.

C. Burden of Proof for Suspension of Parental Rights: The Court may not find suspension of parental rights appropriate unless the petitioner demonstrates by clear and convincing evidence that the criteria set forth in this section are met.

D. Burden of Proof for Termination of Parental Rights: The Court may not terminate parental rights unless:

i. there is proof beyond a reasonable doubt that the criteria set forth below in this section are met, and;

ii. that suspension of parental rights cannot be accomplished and termination is the only option.

E. Where a petition is filed by a biological parent, suspension or termination is appropriate where the Court finds:

i. The biological parent has been informed of the consequences of a suspension or termination of parental rights;

ii. The desire of the biological parent to suspend or terminate his or her parental rights is not coerced, the result of undue influence, or an involuntary act in light of all the circumstances; and

iii. In the case termination of parental rights is requested, why suspension of parental rights or permanent guardianship is not in the best interest of the Pueblo or the child, keeping in mind that termination is an option of last resort and may not be accepted by the Court if the burden of proof has not been met and if it is against custom, tradition or Isleta law.

F. Petitions filed by a biological parent to evade child support obligations are prima facie not in the child's best interests.

G. Where a petition to suspend or terminate parental rights is filed by anyone other than the biological parent whose rights are sought to be suspended or terminated, suspension or termination is appropriate where the Court finds in accordance with the proper burden of proof and applicable standard:

- i. That the child was abandoned by his or her parent or has been determined to be a victim of child abuse or neglect by a court of competent jurisdiction;
- ii. That all services available from the Pueblo have been made available to the parent, and the parent's behavior is not conducive to treatment or rehabilitation; and
- iii. That the conduct or condition of the parent, which makes the parent unfit, is unlikely to change in a reasonable time.

H. In deciding whether the conduct or condition of a parent is unlikely to change within a reasonable time, the Court must find that continuation of the parent and child relationship will, more likely than not, result in continued child abuse or neglect, or that the conduct or condition of a parent renders the parent unfit, unable or unwilling to give the child adequate parental care. The Court shall consider, but is not limited to, the following:

- i. Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;
- ii. A history of violent behavior by the parent;
- iii. An incident of life threatening or gravely disabling injury to or disfigurement of the child caused by the parent;
- iv. Excessive use of intoxicating liquor or of a narcotic or dangerous substance that affects the parent's ability to care and provide for the child and the parent has not taken meaningful steps to remediate the use;
- v. Present judicially-ordered long-term confinement of the parent and a determination that no other option is in the best interests of the child than the suspension of parental rights;
- vi. The serious physical, mental, emotional or psychological injury to, or the death of, a sibling due to proven parental maltreatment of a child; or
- vii. Active efforts by protective service agencies have been unable to rehabilitate the parent.

31-07-05. Notice of Hearing on Petition to Suspend or Terminate Parental Rights

A. Upon the filing of a petition seeking an order for the suspension (or termination) of parental rights, a hearing shall be set within thirty (30) to sixty (60) days of the petition's filing and the Court shall provide written notice of such hearing to be served upon the petitioner; the child's tribe; the child's biological parent(s); resource or foster parents, guardian(s), extended family members; caretaker, if any; and appropriate agencies which may either have an interest in the proceedings or be of assistance to the court in adjudicating the matter.

B. The Court shall make inquiry on the record to ensure that the biological parent(s) received notice if he/she or they are not in attendance or have not provided a written statement under oath (or otherwise validly established as authentic) to the Court acknowledging that they are aware of the hearing and its purpose. Sworn testimony by the Department, Petitioner or other interested party that actual notice of hearing was provided to the biological parent(s) is prima facie evidence that notice was provided.

C. If the whereabouts of the biological parent(s) are unknown and the biological parent(s) is/are not in attendance at the hearing, the Court shall make inquiry on the record as to what efforts were made to discover the location of the biological parent(s) and notify them of the hearing, including:

- i. Publication for three (3) weeks in any paper that circulates in the county or city where a biological parent was last known to reside regarding notice of the hearing shall be prima facie evidence that notice was provided if a copy or proof of publication is provided to the Court; or
- ii. If the Court determines that insufficient efforts were made to notify a biological parent, the Court will elicit suggestions for attempting notification from the parties and then will inform the petitioner and the Department as to what is necessary to ensure that notification requirements have been met.

31-07-06. Hearing

A. Attendance at hearing:

- i. The biological parent(s), petitioner, respondent, family members, the Department, resource/foster parents, guardians or other individuals the Court deems necessary may be present at the hearing;
- ii. The petitioner's failure to appear may be grounds for dismissal of the petition;
- iii. The failure of one or both of the biological parent(s) to appear shall not prevent the issuance of an order for suspension (or termination) of parental rights; and
- iv. The Court may continue the hearing for no longer than thirty days (30) unless evidence is provided that an extension is required for notice in accordance with the notice requirements of this section.

B. Conduct of the hearing:

- i. The Court shall inform the biological parent(s) of their rights under this Act, as well as the nature and consequences of the proceedings. These rights shall include the right to summon and cross-examine witnesses;
- ii. Section 31-01-9 shall govern the testimony in these proceedings; and
- iii. The burden of proving the allegations of the petition shall be upon the petitioner.

C. All hearings are on the record and properly recorded.

31-07-07. Findings

A. In all cases, the Court shall make specific written findings of fact, state separately its conclusions of law, and include both in the written order as well as enter an appropriate judgment or order.

B. The Court may make findings that it is in the child's best interests that a final order suspending (or terminating) the parental rights be entered and the Court shall specify the basis of those findings.

C. Using the appropriate standard of proof the Court will make necessary findings for suspension or termination of parental rights that include, but are not limited to, how the Court ordered action:

- i. Recognizes the best interests of the child and the Pueblo;
- ii. Recognizes the best relationship possible between the child, biological parent(s), any extended family, other individuals determined from evidence entered in Court to be important to the child such as resource parents, guardians. If continued contact with the biological parent(s) continues the Court must base that on a finding that the contact/visitation will benefit the child and the biological parents and extended family must agree to abide by any reasonable restrictions and conditions that the Pueblo may place upon them;
- iii. Modifies the legal relationship with the biological parent(s) and/or custodian as well as include any visitation or contact the biological parent(s) and/or custodian will have with the child and the conditions that must be met for this contact to occur;
- iv. Protects the rights of inheritance of the child from the families of the biological parents, including inheritance which may be controlled by federal law pursuant to the Pueblo of Isleta probate laws;
- v. States that the biological parent(s) have no ongoing legal obligations to and are not responsible for the child's care, custody or welfare. However, the biological parent(s) may

contribute to the child's welfare through appropriate gifts, school supplies and by providing culturally appropriate items to assist with the child's cultural development;

vi. Supports and protects the legal relationship between the child and the Pueblo, the child's current or future membership or enrollment with the Pueblo, especially if the child is being placed with non-tribal and/ or adoptive parents who are not members of the Pueblo and how the child's Pueblo and federal rights and privileges are protected as a member of the Pueblo; and

vii. Recognizes and explains that any rights, contact or privileges not identified in these findings are waived by the biological parent(s), custodian or extended family and shall vest with the adoptive parents.

31-07-08. Final Order for Suspension of Parental Rights

A. If the Court determines that, based upon the findings and conclusions of law, it is in the best interests of the child and the Pueblo, it shall issue a final order for a suspension of parental rights. Such an order for the suspension of parental rights may also include, but is not limited, to the following:

- i. The necessary findings as set forth in Section 31-07-7;
- ii. Permanent suspension of the parental rights of a parent including the suspension of the right to the care, custody and control of the child and allowing the child to be adopted;
- iii. May allow for a contact agreement of the parties to be ordered by the Court;
- iv. Ordering that a biological parent(s)' obligation to pay child support, except for arrearages, is hereby terminated;
- v. Ordering that any prior Court order for custody, visitation or contact with the child is hereby terminated;
- vi. Ordering that the biological parent(s) shall have no standing to appear at any future legal proceedings involving the child;
- vii. Ordering that the suspension of parental rights does not sever or affect in any way the child's relationship to the Pueblo, or any rights of inheritance from the biological parent(s); and
- viii. Stating that any rights, contact or privileges not identified in these findings are waived by the biological parent(s), custodian or extended family and shall vest with the adoptive parents.

B. Copies of any order for suspension of parental rights shall be served upon the biological parent(s) and the Department or other agencies having legal custody of the child and any other parties as directed by the Court.

C. Court review of final orders for the suspension of parental rights: The Court may review a final order suspending parental rights, at the request of the biological parent(s), the Department, on behalf of its self only if one of the following occurs:

- i. If there is no final permanency order in effect after a period of one (1) year after the entry of the final order suspending parental rights;
- ii. The adoption of the child fails; or
- iii. The adoptive parent is deceased.

31-07-09. Final Order for Termination of Parental Rights

A. If the Court determines that, based upon the findings and conclusions of law, it is in the best interests of the child and the Pueblo, it shall issue a final order for a termination of parental rights. Such an order for the suspension of parental rights may also include, but is not limited, to the following:

- i. The reasoning for granting the termination;
- ii. A statement as to why termination is in the best interest of the Pueblo and child;
- iii. A statement as to why termination is sought instead of suspension or permanent guardianship;
- iv. Permanent suspension of the right of a parent to have contact with the child including contact in person, by mail, by telephone or through third parties or the order may allow for a contact agreement of the parties to be ordered by the Court; or
- v. Restraining a parent from contacting the child, the child's foster parent(s), the child's adoptive parent(s) and/or the Department or other agencies possessing information regarding the child;

B. The Court may only review a termination of parental rights where there is proof beyond a reasonable doubt that the order is based upon evidence that is subsequently proved fraudulent.

31-08 CUSTOMARY ADOPTION

31-08-01. Short Title

This chapter may be cited as the "Adoption Act".

31-08-02. Purpose

It is the fundamental belief of the Pueblo that its children are the sacred responsibility of the Pueblo, the principles that shall guide decisions pursuant to the Adoption Act are as follows:

- A. acting in the child's best interests which requires promoting a sense of permanency and belonging throughout a child's life;
- B. protection of the child's safety, well-being and welfare;
- C. preservation of the child's identity as a tribal member, member of an extended family and clan;
- D. providing the child with knowledge of and experience with our culture, religion, language, values, history, clan system, tribal government, and importantly our way of life;
- E. To embody and promote the basic traditional values of the Pueblo regarding the protection and care of the Pueblo's children, the Pueblo believes that it is the responsibility of the Pueblo, the Isleta community and extended families to protect, care for, and nurture our children;
- F. One of the Pueblo's basic inherent sovereign rights is the right to make decisions regarding the best interests of its children including who should provide for the care, custody and control of its children;
- G. The Pueblo delegates the authority to its Children's Court ("Court") to adjudicate its customary practices regarding child rearing and child custody;
- H. To afford judicial processes which allow for formal adjudications that address the issues of the rights, responsibilities, care, custody and control of children when the biological parents are unable or unwilling to provide a safe, stable, nurturing and permanent environment for their children;
- I. It is the intent of this Act that suspension of parental rights and customary adoptions are clearly preferred as being consistent with purposes as set forth above, in the event a permanent guardianship is not feasible. Suspension of parental rights and customary adoptions better preserve the connection between the child and his/her family, clan, the Pueblo, customs and traditions while providing the sense of permanency that children need and deserve.

31-08-03. Definitions

As used in the Adoption Act:

- A. "Adoptee" is defined as the individual, child or adult who is adopted or is to be adopted;
- B. "Adoptive Parent" is defined as the person establishing or seeking to establish a permanent parent and child relationship with a child who is not their biological child;
- C. "Best Interests of the [Pueblo]" is defined as a variety of factors including but not limited to the ability of the Pueblo and its members to provide for the child; the ability of the Pueblo and its members to provide for the continuation of the Pueblo's culture, language, history, religion, traditions and values through its children if those children are taken away and not taught these

things throughout their daily lives. The ability of the Pueblo to continue as a viable cultural entity will be hindered by the loss of its children. Every child is a gift from the creator and is viewed by the Pueblo as crucial to the future of the Pueblo as a whole;

D. “Birth Parent” is defined as the biological parent;

E. "Cultural compact" means an agreement that documents how an Isleta child placed in an adoptive or permanent guardianship home will continue to actively participate in the child's cultural learning and activities and that is entered into among the adoptive parents of the child, which parents or guardians are not members or eligible for membership with Isleta;

F. “Family member” means a person who is defined to be a relative by law, custom or tradition of the Pueblo or, in the absence of such law or custom, means a person who is eighteen years of age or older and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, stepparent or godparent; the term is used interchangeably with “relative;”

G. “Final decree of customary adoption” is defined as the final Court order which establishes the permanent legal relationship between the child and the adoptive parent(s) and establishes any contact which may be allowed with the biological parent(s);

H. “Member” (or “Pueblo of Isleta member”) is defined as any individual who is descended from a biological parent who is an Isleta Pueblo member or enrolled member or otherwise recognized by the Pueblo as a member. In the case of a child, it is a child whose biological parent(s) or grandparents are Pueblo members, including those enrolled in the Pueblo of Isleta;

I. “Traditional Witnesses” is defined as the Isleta Traditional Leaders, child’s Isleta family members, Isleta Social Service Worker who is a member of Isleta, Isleta elders, Isleta Tribal Leaders, Isleta Cultural Committee Members or any other Isleta Community Member that can speak to Isleta customs and traditions;

J. “State court” means a court of a state, having civil jurisdiction over the child or children who are the subject of a suspension of parental rights petition or customary adoption petition.

31-08-04. Jurisdiction

A. All adoptions at the Pueblo will be customary adoptions. The Court shall have exclusive jurisdiction in any action for customary adoption for:

- i. A member or enrolled member of the Pueblo;
- ii. A child eligible for membership or enrollment with the Pueblo;
- iii. A child who has a biological parent who is eligible for membership or enrollment in the Pueblo; and
- iv. A child who has a biological grandparent who is eligible for enrollment.

31-08-05. Adoption Preferences

Adoption preferences will be the same as Placement Preferences under the Abuse and Neglect Act.

31-08-06. Customary Adoption Proceedings

A. Any adult or the Department may file a petition on behalf of the adoptive parent(s), but generally the adoptive parent(s) will file a petition with the Court seeking an order for the customary adoption of a child. The petition shall contain the following information:

- i. The name, address, telephone number, and documentary proof of the birth date and age, of the child to be adopted;
- ii. The name, address, and telephone number of the petitioner/adoptive parent(s), the petitioner's/adoptive parent(s)' relationship, if any, to the child; the names, ages of other children and adults in the adoptive parent(s) residence;
- iii. The name, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the child. The Department as well as the Pueblo Enrollment Office shall assist in the identification of potentially interested relatives if needed;
- iv. An order by a court suspending or terminating the biological parents' parental rights to the child, or properly evidenced consent of the biological parents and, if applicable the child's legal guardian, to the customary adoption, or proof of death of the biological parents;
- v. A statement or a copy of the final order suspending the parental rights of the biological parent(s);
- vi. A statement as to why a final order for customary adoption is in the best interests of the child and the best interests of the Pueblo;
- vii. A statement as to basis for the customary adoption supported by a home study, medical, psychiatric, child protection worker, family member and/or psychological reports or testimony; and
- viii. A statement that no similar action is pending in a tribal or state court having jurisdiction over the child.

31-08-07. Investigative Report

A. Unless otherwise indicated by written order of the Court, a report will be provided by the Department. In making this report, the Department will work as needed with Court personnel,

such as probation and the court administrator and any other relevant Pueblo agencies. The report will include but is not limited to:

- i. The qualifications of the adoptive parent(s), including any criminal record and background. Note that serious criminal offenses or substantiated acts committed by the petitioner (or others that the child will be exposed to because of the adoption under conditions that may endanger him/her) that are deemed detrimental to children, especially those involving serious crimes against children shall disqualify a petitioner from adopting the child;
- ii. The nature and condition of the proposed residence where the adoptee will reside, including how the child will be included with other potential siblings and other individuals in the residence;
- iii. Maintains the visitation/contact set forth in the order of suspension of parental rights between the child, biological parent(s), any extended family, clan, other individuals determined from evidence entered in Court, to be important to the child such as resource parents, guardians, and the reasonable conditions that must be met for this contact to occur under the adoptive parent(s)' supervision and control;
- iv. A statement of assurances that the adoptive parent(s) will abide by and incorporate into the adoption any contact or visitation specified in the suspension order by the biological parents, extended family, clan and/or tribe;
- v. A statement of assurance that the adoptive parent(s) will maintain Pueblo culture and traditions with the child including the attendance if applicable, at religious events, feast days and other traditional obligations;
- vi. If applicable, where the child will attend school;
- vii. Whether a cultural compact is necessary;
- viii. How it is in the best interests of the child and the Pueblo;
- ix. Protects the rights of inheritance of the child from the families of the biological parents, including inheritance which may be controlled by Isleta Probate Law;
- x. States that the biological parent(s) have no ongoing legal obligations to and are not responsible for the child's care, custody or welfare. However, the biological parent(s) may contribute to the child's welfare through appropriate gifts, school supplies and by providing culturally appropriate items to assist with the child's cultural development;
- xi. Supports and protects the legal relationship between the child and the Pueblo, the child's current or future membership or enrollment with the Pueblo, especially if the child is being placed with adoptive parents who are not members of the Pueblo, or other Indian

tribe and how the child's Pueblo and federal rights and privileges are protected as a member of Isleta;

xii. Promotes Isleta tradition and culture through assistance from extended family, and/or Isleta members with the development of regalia, language, or culture and tradition;

xiii. Recognizes and explains that any rights, contact or privileges not identified in these findings are waived and shall vest with the customary adoptive parents; and

xiv. The adoptive parents shall discuss with the biological parents and/or relatives the traditional status of the child for continuation of traditional participation and/or cultural development.

31-08-08. Notice of Hearing on Petition for Customary Adoption

A. A hearing will be set within ten (10) days, upon the filing of a customary adoption petition and completion of the investigative report.

B. Notice shall be sent to:

i. the petitioner/adoptive parent(s);

ii. grandparents; and

iii. the Department;

C. Notice may be sent to other appropriate extended family members, any appropriate individual or agency with a relevant interest in the proceedings or that may be of assistance to the Court in adjudicating this matter.

D. Notice may be personally served, sent by certified mail or regular mail (and is presumed received if the mail is not returned). Notice shall also comply with any other method and in accordance with any other procedure authorized by the rules of the Court.

E. Actual notice such as verbally informing a party is acceptable if the party or individual who provided the notice provides sworn testimony or a sworn written statement of such notice.

31-08-09 Hearing on Petition for Customary Adoption

A. Attendance at hearing:

i. Unless there is written excusal by the Court, the child who is the subject of a petition for customary adoption, the Department, other relevant agencies, the petitioner and any appropriate family members shall be present at the hearing; and

ii. The petitioner shall be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.

B. Conduct of the hearing:

i. The Court shall inform the parties of their rights under this Act and of the nature and consequences of the proceedings. This shall include the rights to summon and cross-examine witnesses and the parties' rights under the Pueblo of Isleta Constitution;

ii. Except where it conflicts with tradition, pursuant to the Isleta Rules of Civil Procedures Rule 5.03, the Court will rule on whether particular testimony or other evidence will be admitted or excluded, using common law principles and guided by state or federal rules of evidence, unless otherwise specified under the provisions of this code; and

iii. The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence.

C. Record of proceedings. All hearings are on the record and properly recorded.

D. Findings.

i. In all cases, the Court shall make specific findings of fact, state separately its conclusions of law, and include both in the judgment or order;

ii. The Court shall make findings that it is in the child's best interests that a final order of customary adoption be entered and the Court shall specify the bases of those findings; and

iii. Based upon the evidence at hearings, the petition, documents filed and the investigative report, the Court will make necessary findings for determining whether the customary petition will be granted or denied and under what conditions. The necessary findings include, but are not limited to, how the customary adoption:

1. Is in the best interests of the child and the Pueblo;

2. Maintains the visitation/contact set forth in the order of suspension of parental rights between the child, biological parent(s), any extended family, clan, other individuals determined from evidence entered in Court, to be important to the child such as resource parents, guardians, and the reasonable conditions that must be met for this contact to occur under the adoptive parent(s)' supervision and control;

3. Protects the rights of inheritance of the child from the families of the biological parents, including inheritance which may be controlled by Isleta Probate Law;

4. States that the biological parent(s) have no ongoing legal obligations to and are not responsible for the child's care, custody or welfare. However, the biological parent(s) may contribute to the child's welfare through appropriate gifts, school

supplies and by providing culturally appropriate items to assist with the child's cultural development;

5. Supports and protects the legal relationship between the child and the Pueblo, the child's current or future membership or enrollment with the Pueblo, especially if the child is being placed with adoptive parents who are not members of the Pueblo, or other Indian tribe and how the child's Pueblo and federal rights and privileges are protected as a member of Isleta;

6. Assures that the adoptive parent(s) will maintain Isleta culture and traditions with the child including the attendance if applicable, at religious events, feast days and other traditional obligations;

7. Promotes Isleta tradition and culture through assistance from extended family, and/or Isleta members with the development of regalia, language, or culture and tradition;

8. Recognizes and explains that any rights, contact or privileges not identified in these findings are waived and shall vest with the customary adoptive parents; and

9. The adoptive parents shall discuss with the biological parents and/or relatives the traditional status of the child for continuation of traditional participation and/or cultural development.

31-08-10. Final Order for Customary Adoption

A. If the Court determines that it is in the best interests of the child and the Pueblo, it shall issue a final order for a customary adoption. Such an order may include, but is not limited, to the following:

- i. All necessary findings as set forth above and any conclusions of law;
- ii. A statement that the child has been adopted by the petitioner(s) and that the parent child bond is hereby established and that all of the rights and responsibilities of that relationship shall exist upon the entry of such a final order;
- iii. Unless it is not in the best interest of the Pueblo or the child, the name of the child shall remain the same;
- iv. A statement that the legal relationship between Isleta and the child for membership and/or enrollment is protected even if the child is adopted by a person who is not a member of Isleta; and
- v. A statement that recognizes and explains that any rights, contact or privileges not specified in the Court order are waived and shall vest with the customary adoptive parents.

31-08-11. Certification of a Traditional Adoption

A. A traditional adoption, conducted in a manner that is a long established, continued, reasonable process and considered by the people of the Pueblo to be binding and authentic, based upon the testimony of traditional witnesses, may be certified by the Court as having the same effect as an adoption order issued by any other court so long as it is in the best interests of the child and Pueblo.

B. A decree certifying a traditional adoption has the same effect as a decree or final order of customary adoption issued by this Court.

31-08-12. Enforcement

Final orders for the suspension of parental rights or customary adoption may be enforced by utilizing the contempt powers of the Court as set forth in this Code.

31-08-13. Appeals

Any party to an action to suspend the parental rights of a parent pursuant to this Act or any party to a customary adoption may appeal a final Court order.

31-08-14. Right of Access to Records

Any party deemed appropriate by the Court and the child who has been the subject of a suspension of parental rights proceeding or a customary adoption proceeding has the right, upon reaching the age of majority, to review all of the Court's file on these matters subject to redaction of names or the rights of confidentiality of some documents under Federal or Pueblo of Isleta law.