

RINCON BAND OF LUISEÑO INDIANS



**LIMITED WAIVER OF SOVEREIGN IMMUNITY ORDINANCE
RINCON TRIBAL CODE § 2.100**

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LIMITED WAIVER OF RINCON TRIBAL SOVEREIGN IMMUNITY

Rincon Tribal Code § 2.100

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§ 2.100 PURPOSE AND INTENT

The Rincon Band of Luiseño Indians, also known as the “Tribe,” is a sovereign Indian tribal government. The purpose of this law is to protect and preserve the sovereign immunity of the Tribe, to define the entities and individuals entitled to the protection of such immunity, and to specify the manner in which such immunity may be waived.

The Tribe possesses the same inherent sovereignty and sovereign authority as other nations. The United States of America, in the exercise of its trust responsibility to preserve and protect sovereign tribal nations, recognizes, acknowledges, and protects the principle of tribal sovereign immunity. The principle of tribal sovereign immunity is well established and long recognized in federal policy and in federal judicial decisions, legislative enactments, and in administrative regulations, policies and decisions. Tribal sovereign immunity exists both on and off reservation, and extends to the Tribe itself, to agencies, arms, entities and enterprises of the Tribe as well as to employees, officers, agents acting on behalf of the Tribe and within the scope of their authority. Under the principle of tribal sovereign immunity, the Tribe, its agencies, arms, entities and enterprises and its employees, officers and agents cannot be sued in any court without the Tribe’s express consent, or if the Congress of the United States has enacted specific legislation expressly waiving the sovereign immunity of Indian tribes in certain instances.

Preservation and recognition of the principle of tribal sovereign immunity is necessary to the functioning of the Tribe and its agencies, arms, entities and enterprises, to preserve scarce tribal assets and to ensure that tribal assets, to the greatest extent possible, are preserved for programs and services that will benefit the tribal membership and their families. The Tribal Council also recognizes, however, that the limited waiver of the Tribe’s sovereign immunity is necessary to conduct tribal governmental business and to engage in contracts and agreements with non-tribal governments, persons, entities or enterprises that will further the objectives and goals of the Tribe because, without a valid waiver of tribal sovereign immunity, agreements and contracts entered into by the Tribe cannot be enforced by the non-tribal contracting party. Waiver of the Tribe’s sovereign immunity for specific transactions is an exercise of the Tribe’s sovereign authority because only sovereign nations possess the authority to waive their sovereign immunity. The Tribe has a critical interest in approving limited waivers of its sovereign immunity and in ensuring that companies, governments and other entities who contract with the Tribe have the right to exercise the contractual remedies they have bargained for.

§ 2.101 AUTHORITY

Pursuant to Section 6 of the Articles of Association of the Tribe, the Tribal Council is authorized to manage and lease or otherwise deal with tribal lands and community resources and

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to enact ordinances. This authority includes the power to waive the sovereign immunity of the Tribe and enter into enforceable agreements on behalf of the Tribe.

§ 2.102 DEFINITIONS

(a) “Tribe” means the Rincon Band of Luiseno Indians of the Rincon Reservation, Valley Center, California, and the agencies, entities, arms and enterprises of the Tribe, as appropriate, either together or separately.

(b) “Sovereign Immunity” means immunity from suit or action of the Tribe and its agencies, entities, arms and enterprises, including the officers, agents and employees of the Tribe when acting within the scope of their authority and duty.

(c) “Officer” means elected members of the Tribal Council of the Tribe, senior management of the Tribe, including the Treasurer, and its agencies, arms, entities or enterprises.

(d) “Resolution” means a written resolution passed by a majority vote of the Tribal Council of the Tribe, or, in the case of an action waiving sovereign immunity as set out in this Ordinance by an agency, entity, arm, enterprise or Officer of the Tribe means an equivalent written action by such agency, entity, arm, enterprise or Officer.

§ 2.103 SCOPE OF SOVEREIGN IMMUNITY PROTECTION

The sovereign immunity of the Tribe extends to the Tribe, to tribal agencies, enterprises, arms and entities of the Tribe, and to Officers, employees and agents of the Tribe in the proper discharge of any official duty, including, any legislative proceeding or judicial proceeding authorized by Tribal Law. The sovereign immunity of the Tribe may only be waived as provided in this Ordinance.

§ 2.104 SCOPE OF WAIVER

(a) Who May Waive Tribe’s Sovereign Immunity. The power and authority to waive the Tribe’s sovereign immunity resides exclusively in the first instance with the Tribal Council. The Tribal Council, by ordinance or Resolution, may delegate in part its authority to waive immunity to specific agencies, arms, entities or enterprises of the Tribe, or to specific Officers of the Tribe. Such delegation of authority to waive the Tribe’s sovereign immunity is expressly limited to the terms of the written delegation, and any purported waiver of tribal sovereign immunity in excess of the expressly delegated authority shall be void and of no legal effect. Any waiver of sovereign immunity by a tribal agency, entity, arm or

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enterprise shall not be a waiver of the sovereign immunity of the Tribe or of any other agency, entity, arm or enterprise of the Tribe.

- (b) **Grant of Waiver of Tribe's Sovereign Immunity.** The Tribal Council may approve and grant a waiver of the Tribe's sovereign immunity in such scope as the Tribal Council determines is in the best interest of the Tribe.
- (c) **Immunity of Tribal Officers, Employees and Agents.** Tribal employees, Officers and agents shall be generally immune from suit or action while acting within the scope of their authority, and while carrying out their job responsibilities, to the same extent as the Tribe. Any action or suit commenced against the Tribe under a waiver of sovereign immunity approved pursuant to this Ordinance shall be brought only against the Tribe, agency, entity, arm or enterprise entering into the waiver, and shall not be brought against Officers, employees or agents of the Tribe carrying out a particular contract or agreement. No action or suit shall be brought or maintained against tribal employees, Officers or agents in their individual capacity, for actions taken as part of their job responsibilities and within the scope of their authority, and any relief pursuant to any such action or suit shall be for prospective injunctive relief only.
- (d) **Written Waivers Only.** All waivers of the Tribe's sovereign immunity must be in writing and properly approved by the appropriate body, agency, entity, arm or enterprise of the Tribe to be valid and effective.
- (e) **Effectiveness.** Unless provided otherwise therein, waivers of the Tribe's sovereign immunity shall be effective and binding upon the Tribe upon passage by the Tribal Council of an authorizing Resolution as provided in this Section 2.104.

§ 2.105 WAIVER BY ORDINANCE

Tribal sovereign immunity may be waived or authorized by Ordinance as specifically set forth therein and subject to any limitations or restrictions as set out therein.

§ 2.106 FORM OF WAIVER

Pursuant to Section 2.104(d), any waiver of the Tribe's sovereign immunity must be in writing to be valid and effective. The actual waiver of sovereign immunity must be set forth with specificity in the contract or agreement waiving immunity, and the Resolution approving the waiver of sovereign immunity must specifically refer to the waiver and its details, or in the alternative, the Resolution may expressly refer to the specific provision, contract or agreement

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containing the waiver of sovereign immunity that is being approved, with the provision, contract or agreement attached to the Resolution. No particular form of waiver is required to waive the Tribe's sovereign immunity, except that a waiver of the Tribe's sovereign immunity must be express, must use the words in any sequence "waiver of sovereign immunity" and must be set out in detail. It is the intent of the Tribe that waivers of sovereign immunity shall be narrowly construed by any court or arbitrator having jurisdiction to interpret a purported waiver of sovereign immunity by the Tribe, and the burden of proof shall lie with the party advocating the existence of a waiver.

§ 2.107 DISPUTE RESOLUTION FOR WAIVERS OF SOVEREIGN IMMUNITY

A waiver of sovereign immunity permitted pursuant to this Ordinance may allow for dispute resolution in any court forum, arbitration forum and or through any other process agreed to by the Tribe, or, in the case of agencies, arms, entities or enterprises of the Tribe, and specific Officers of the Tribe, subject to the terms of the delegation of authority from the Tribal Council.

§ 2.108 NO SUIT OR ACTION PERMITTED WITHOUT A WAIVER OF SOVEREIGN IMMUNITY

Except as hereinafter provided in this Ordinance, no suit or action shall be allowed, permitted or maintained in any forum, including the Rincon Tribal Court or the Inter-tribal Court of Southern California, against the Tribe, its agencies, entities, arms, enterprises, Officers or employees or agents.

§ 2.109 NO EFFECT ON EXISTING WAIVERS OF SOVEREIGN IMMUNITY

Nothing contained in this Ordinance shall be interpreted to invalidate an otherwise valid waiver of the Tribe's sovereign immunity that was enacted in accordance with existing Tribal law at the time of enactment. This Ordinance supersedes any prior resolutions or ordinance purporting to authorize waivers of the Tribe's sovereign immunity to the extent they are inconsistent with the requirements set forth in this Ordinance.

§ 2.110 SEVERABILITY

If any provision of this ordinance shall be held unconstitutional or invalid by the Rincon Tribal Court, only the invalid provision or language shall be severed and the remaining provision and language of this ordinance shall remain in full force and effect.