



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 07-05
Of the
SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises, and its agencies by authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and with protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Squaxin Island Tribal Council finds that the development of the Squaxin Island Gaming Enterprise (hereafter "SIGE") has resulted in increased numbers of non-members coming onto the SIGE site; and

WHEREAS, the Squaxin Island Tribal Council further finds that these visitors may not be aware that the Squaxin Island Tribe and its wholly-owned enterprises are immune from suit except to the extent that immunity has been explicitly waived by federal and tribal law; and

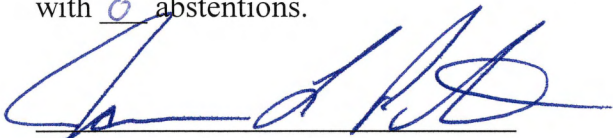
WHEREAS, the Squaxin Island Tribal Council further finds that its sovereign immunity will not permit suit against it and finds that this sovereign immunity doctrine may generate misunderstanding by injured parties; and

WHEREAS, the Squaxin Island Tribal Council finds that an equitable policy should be in place;
and

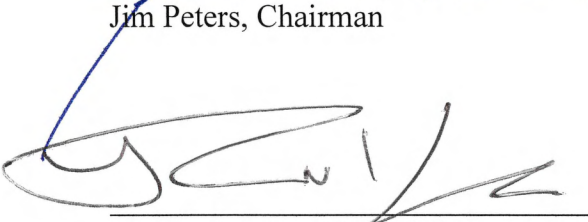
NOW THEREFORE BE IT FURTHER RESOLVED, the Squaxin Island Tribal Council hereby adopts the Tort Claims Ordinance as attached (Chapter 4.56), which states the expressly limited circumstances under which a person may file a claim against the SIGE.

CERTIFICATION

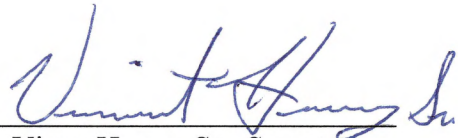
The Squaxin Island Tribal Council does hereby certify that the foregoing Resolution was adopted at a regular meeting of the Squaxin Island Tribal Council, held on this 26th day of July, 2007 at which time a quorum was present and was passed by a vote of 4 for and 0 against with 0 abstentions.



Jim Peters, Chairman



Arnold Cooper, Vice Chairman

Attested by: 
Vince Henry, Sr., Secretary

Chapter 4.56
SQUAXIN ISLAND TORT CLAIMS ORDINANCE

Sections:

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4.56.120	Notice Requirement.
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4.56.150	Attachment Prohibition.
4.56.160	Severability.
4.56.170	Effective Date.

4.56.010 Title.

This Ordinance shall be known as the Squaxin Island Tort Claims Ordinance.

4.56.020 Authority.

The Squaxin Island Tribal Council's authority to adopt the ordinance codified in this title is found in the Squaxin Island Tribal Constitution and in the inherent sovereign authority of the Squaxin Island Tribe over land and activities in Indian country. (Res. 06-__ (part))

4.56.030 Purpose.

The purpose of this title is to ensure peace and order in Indian country, to promote the welfare of members of the Squaxin Island Community, to safeguard individual rights, and to secure rights and powers which are both inherent in the Squaxin Island Tribe's sovereign status and guaranteed to the tribe by treaty and by the laws of the United States.

The development of the Squaxin Island Gaming Enterprise (hereafter "SIGE") has resulted in increased numbers of non-members coming onto the SIGE site. In some instances non-members are not aware that when entering the SIGE site, they are entering a jurisdiction which is separate and distinct from the State of Washington.

These visitors may not be aware that the Squaxin Island Tribe and its wholly-owned enterprises are immune from suit except to the extent that immunity has been explicitly waived by federal or tribal law. The SIGE is a wholly-owned, unincorporated division of the Tribal government and shares the sovereign immunity of the Tribe.

The Squaxin Island Tribal Council recognizes that its sovereign immunity will not permit suit against it and further recognizes this sovereign immunity doctrine may generate misunderstanding by injured parties. The Tribal Council also recognizes that the Tribe relies upon the SIGE to provide funding to support essential Tribal services and functions and that unlimited liability could disrupt the provision of such essential services and functions.

Therefore, the Tribal Council, in order to provide an equitable policy, hereby adopts a Tribal Ordinance which states the expressly limited circumstances under which a person may file a claim against the SIGE. (Res. 06-__ (part))

4.56.040 Scope.

A. Application. This chapter shall apply to the full extent of the sovereign jurisdiction of the Squaxin Island Tribe in Indian country.

B. Compliance with this chapter is hereby made a condition of the use of any land or premises in Indian country.

C. Deemed to Consent. Any person who resides, works, conducts business, engages in a business transaction, receives benefits from the Tribal government including but not limited to police, fire or emergency services, acts under Tribal authority, or enters the Indian country under the jurisdiction of the Squaxin Island Tribe shall be deemed thereby to have consented to the following:

1. To be bound by the terms of this chapter;
2. To the exercise of civil jurisdiction by the Squaxin Island Tribal Court over said person in legal actions arising pursuant to Tribal law; and
3. To detainment, service of summons and process, and search and seizure, in conjunction with legal actions arising pursuant to Tribal law.

D. This Ordinance does not constitute a general waiver of Tribal sovereign immunity. This Ordinance applies only to those activities undertaken by the SIGE or its employees and which occur on the SIGE site as defined herein. This Ordinance is intended to permit only those claims which are considered actions arising in tort under tribal law or Washington state law and which are covered by the liability insurance of the SIGE. This Ordinance is to be strictly construed. (Res. 06-__ (part))

4.56.040 Definitions.

Unless otherwise required by the context, the following words and phrases shall be defined as follows:

“Award” means money damages which the Tribal Court determines are payable to compensate for any injury recognized under this Ordinance.

“Actual Damages” means the ascertainable loss of money or property sustained as a result of an injury, provided that such injury is covered by the liability insurance of the SIGE without regard to any deductible amount contained in the insurance policy.

“Claim” means a petition for an award under this Ordinance. A claim may be filed with respect to any injury as defined in this Ordinance and which is expressly covered by the liability insurance of the SIGE without regard to any deductible amount contained in the insurance policy.

“Dangerous Condition” means a physical aspect of a facility or the use thereof which constitutes an unreasonable risk to human health or safety, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by the negligent acts or omissions of the SIGE in constructing or maintaining such facility. For the purposes of this subsection, a dangerous condition should have been known to exist if it is established that the condition had existed for such a period of time and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. A dangerous condition shall not exist solely because the design of any facility is inadequate nor due to the mere existence of wind, water, ice or temperature by itself, or by the mere existence of a natural physical condition. Nothing in this section shall preclude an accumulation of water, snow, or ice from being found to constitute a dangerous condition when the SIGE fails to use existing means available to it for the removal of such accumulation and when the SIGE had notice of such accumulation and reasonable time to act.

“Employee” means a part- or full-time employee or an agent or contractor of the SIGE when acting during the course and within the scope of their employment. This term includes officers and directors of the SIGE when they are acting to fulfill their duties to the SIGE. This does not include agents or representatives of the United States or of the State of Washington or any of their political subdivisions.

“Injury” means death, harm to a person, or damage to or loss of property which, if inflicted by a person under tribal law or Washington state law, would constitute a tort and which is expressly covered by the liability insurance of the SIGE without regard to any deductible amount contained in the insurance policy.

“Person” means and includes any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity, or other identifiable entity.

“Squaxin Island Gaming Enterprise Site” or “SIGE site” means that area of the Squaxin Island Tribe’s Indian country which has been opened to the general public for purposes of gaming, hotel accommodations, golf, and related SIGE operations or which is used by employees of the SIGE during the course of their employment provided that such area is covered by the liability insurance of the SIGE.

“Squaxin Island Tribal Council” or “Tribal Council” means the governing body of the Squaxin Island Tribe.

“Tribe” means the Squaxin Island Tribe.

4.56.060 Limited Waiver of Sovereign Immunity

A. The sovereign immunity of the Tribe and its wholly-owned enterprises shall continue in full force and effect except to the extent that it is expressly waived by this Ordinance. Notwithstanding any provision to the contrary herein, members of the Tribal Council remain immune from suit for actions taken during the course and within the scope of their duties as members of the Tribal Council.

B. The SIGE may be sued solely in the Squaxin Island Tribal Court. The Tribe has not waived the immunity of the SIGE from suit in state or federal Court.

C. The sovereign immunity of the SIGE is waived in the following instances:

1. Injuries proximately caused by the negligent acts or omissions of the SIGE;
2. Injuries proximately caused by the condition of any property of the SIGE provided the claimant establishes that the property was in a dangerous condition;

3. Injuries caused by the negligent acts or omissions of Tribal Security Officers arising out of the performance of their duties at the SIGE site during the course and within the scope of their employment.

4.56.070 Limitation on Awards

A. No rule of law imposing absolute or strict liability shall be applied in any claim for injuries under this Ordinance.

B. No award or other judgment imposing punitive or exemplary damages shall be applied in any claim for injuries under this Ordinance.

C. No award for loss of consortium shall be applied in any claim for injuries under this ordinance.

D. No award for pain and suffering or mental anguish shall be applied except where such award does not exceed fifty percent (50%) of the actual damages sustained and provided that any such award is expressly covered by the liability insurance of the SIGE without regard to any deductible amount contained in the insurance policy.

E. In no case shall an award exceed the available proceeds from the liability insurance of the SIGE.

4.56.080 Volunteers

Volunteers duly authorized by the Tribe or SIGE, in performing any of their authorized functions or duties or training for such functions or duties, shall have the same degree of responsibility for their actions and enjoy the same immunities from suit as the SIGE.

4.56.090 Employee Actions Outside the Scope of Employment

This Ordinance does not immunize employees of the SIGE from individual liability for the full measure of the recovery applicable to a claimant if it is established that their conduct exceeded the scope of their employment or authority. Claims for individual liability arising out of conduct that is found to exceed the scope of employment and that arise on the SIGE site shall be heard only in the Tribal Court.

4.56.100 Liability for Expenses

If the Tribal Court determines that the injuries claimed arose from an act or omission of an employee of the SIGE which was willful and wanton or otherwise outside the scope of employment or authority of the SIGE, then the SIGE may request, and the Court shall order upon SIGE's request, that the individual defendant named in the claim reimburse the SIGE for costs and attorney fees which may have been incurred in the defense of such employee.

4.56.110 Extent of Liability

In any claim concerning a single occurrence, the maximum amount of any award under this Ordinance, including damages, Court costs, interest, and any other costs shall be:

A. For any injury to one person, an amount which is in accordance with the terms of the liability insurance policy of the SIGE applicable to such claim.

B. For any injury to two or more persons, an amount in accordance with the terms of the liability insurance policy of the SIGE applicable to such claim.

4.56.120 Notice Requirement

A. Claims brought under this Ordinance must be preceded by a written notice filed with the Tribal Court by the claimant or the claimant's representative within one-hundred-eighty (180) days after the claim accrues. A copy must be provided to the Tribe's Legal Department, on the same date.

B. The notice shall contain the following:

1. The name and address of the claimant and the name and address of the claimant's attorney, if any;
2. A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or condition complained of;
3. The name of any Gaming Enterprise employee involved, if known;
4. A concise statement of the nature and the extent of the injury claimed to have been suffered;
5. A statement of the amount of monetary damages that is being requested;
6. When the claim is one for death by negligent act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin of the deceased.

C. All claims must be filed along with a proof of compliance with this subsection.

4.56.130 Limitation on Presentation of Claim

All claims shall be filed within one-hundred-eighty (180) days of the date on which they accrued. Claims brought under this Ordinance shall be deemed to accrue on the date when the injury is sustained.

4.56.140 Application of Law

Any claim brought under this Ordinance shall be determined by the Tribal Court in accordance with Tribal law. In the absence of specific Tribal law, the Tribal Court may refer to principles of law applicable to similar claims arising under the laws of the State of Washington, but in no case shall Washington law be deemed or construed to have been adopted as Tribal law for the purposes of this Ordinance.

4.56.150 Attachment Prohibition

Neither execution nor attachment shall issue against the SIGE, the Tribe, or any of the wholly-owned enterprises of either in any claim for injury or proceedings initiated under this Ordinance.

4.56.160 Severability

If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected.

4.56.170 Effective Date.

This Ordinance shall become effective immediately upon approval by the Tribal Council.