

Building and Safety Act

CHAPTER 11. SAN MANUEL BUILDING AND SAFETY ACT¹

SMTC 11.1 Title

This Chapter shall be known and cited as the “San Manuel Building and Safety Act” (hereinafter the “Act”).

SMTC 11.2 Statement of Purpose

This Act is adopted by the General Council of the San Manuel Band of Mission Indians, a federally recognized Indian tribe, pursuant to its authority under the Tribal Articles of Association, for the purpose of establishing the regulation of all building Construction on the San Manuel Indian Reservation excluding Construction to Gaming Facilities governed by the San Manuel Gaming Facility Building and Safety Ordinance SMTC 14. It is the object and purpose of this Act to regulate the Construction, demolition, occupancy, equipment, use, height, area and maintenance of buildings, structures, or appurtenances connected or attached to such buildings or structures upon the Reservation to ensure that all Construction regulated by this Act is conducted in a professional and safe manner.

SMTC 11.3 Definitions

11.3.1 **“Business Committee”** means the seven member committee established under the Tribe’s Articles of Association.

11.3.2 **“Building Regulations”** means the list of all laws, regulations and any Non-Tribal Codes adopted, amended, or rejected by the General Council relating to standards for Construction, demolition, occupancy, equipment, use, height, area and maintenance of buildings, structures, or appurtenances connected or attached to such buildings or structures.

11.3.3 **“Certified Building Official”** means the individual vested with the responsibility for overseeing Tribal enforcement and compliance with all provisions of the Act, sections of the Building Regulations and permit conditions.

11.3.4 **“Construction”** means to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure; to grade, excavate or perform earthwork construction; or to erect, install, enlarge, alter, repair, remove, convert, or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this Act, or to cause any such work to be done.

11.3.5 **“Construction Inspector”** means any person hired by the Department of Building and Safety in a temporary or permanent capacity for the purpose of inspecting Construction for structural, seismic safety, fire and life safety, or building system requirements

¹ Adopted by the General Council as Ordinance No. 97.01 on September 9, 1997. Amended by the General Council on November 14, 2000, March 13, 2001, October 14, 2003, October 9, 2007, October 13, 2009, June 10, 2014 and June 9, 2015. See also Chapter 14, "San Manuel Gaming Facility Building and Safety Ordinance."

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of the Act and the Building Regulations, as applied to residential, commercial, or industrial buildings on the Reservation.

11.3.6 **“Construction Planner”** means the individual responsible for coordinating the efforts of the estimating staff and accountable for the overall outcome of the estimates and project schedules for all project proposals.

11.3.7 **“Corrected”** means the violation has been cured or affirmative corrective measures acceptable to the Certified Building Official have been commenced and are continuing in effort to cure the violation.

11.3.8 **“Current Edition”** means the most current versions of the laws and regulations adopted pursuant to section 11.3 of the Act by the General Council.

11.3.9 **“Department of Building and Safety”** means the department established by the Tribe to implement, administer, and enforce the provisions of the Act regulating Construction on the Reservation.

11.3.10 **“General Council”** means the governing body of the Tribe established under the Tribe’s Articles of Association.

11.3.11 **“Indian Contractor”** means a contractor who has submitted proof acceptable to the Department of Building and Safety of membership, descendancy or degree of Indian ancestry as indicated on membership rolls or records of a federally recognized Indian tribe.

11.3.12 **“Non-Tribal Code”** means any international, federal, state, or local code, law, ordinance, regulation, or rule relating to standards for Construction.

11.3.13 **“Notice of Violation”** means a notice issued by the Certified Building Official citing the provision of the Act, sections of the Building Regulations or any permit conditions that the Certified Building Official believes the recipient has violated.

11.3.14 **“Plans Examiner”** means an individual hired by the Department of Building and Safety in a temporary or permanent capacity for the purpose of performing Construction plan review for structural, seismic safety, fire and life safety, or building system requirements of the Act and the Building Regulations, as applied to residential, commercial, or industrial buildings on the Reservation.

11.3.15 **“Reservation”** means the San Manuel Indian Reservation.

11.3.16 **“Tribal”** means of or belonging to the Tribe.

11.3.17 **“Tribal Building Officer”** means the individual designated by the Tribe as having primary responsibility for overseeing the Department of Building and Safety.

11.3.18 **“Tribe”** means the San Manuel Band of Mission Indians, a federally recognized Indian tribe.

11.3.19 **“Tribal Disbursement”** means any payment of Tribal funds to a Tribal member, including but not limited to per capita payments.

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SMTC 11.4 Adoption and Incorporation of Non-Tribal Codes

11.4.1 The General Council shall have the authority to adopt, amend or reject all or any portion of any Non-Tribal Code. Upon the adoption of any Non-Tribal Code, the Current Edition of the adopted Non-Tribal Code shall automatically become incorporated into the Building Regulations on its effective date; provided, however, that any excluded portions of such code shall not be adopted and any amended portions shall continue in effect in their amended form. All references to any state, jurisdiction, governmental unit, or governmental department shall automatically be amended to refer to the Tribe or its respective Tribal department.

11.4.2 The Tribal Building Officer or his delegate shall present any proposed changes or updates to any adopted Non-Tribal Codes to the General Council no less than thirty (30) days prior to the effective date of such Non-Tribal Codes and shall make recommendations as to whether any changes or updates contained therein should be adopted, modified or rejected by the General Council.

11.4.3 The Building Regulations incorporating the list of all Non-Tribal Codes adopted, amended, or rejected by the General Council shall be maintained on file with the Department of Building and Safety and shall be open for inspection by Tribal members and any contractors, architects, and civil engineers hired by a Tribal member or the Tribe.

11.4.4 The provisions of this Act and the laws or regulations adopted by the Tribe in any Tribal ordinance shall supersede any section of the Building Regulations or any Non-Tribal Codes adopted pursuant to this section of the Act that are in conflict with any Tribal law, ordinance or regulation.

11.4.5 Any reference to a state law or regulation or the adoption thereof is not intended, and shall not be deemed, to confer jurisdiction upon the state referenced.

SMTC 11.5 Permits

11.5.1 Any owner or authorized agent who intends to engage in Construction on the Reservation shall first make application to the Department of Building and Safety and obtain any required permits.

11.5.2 No permit shall be issued to an individual hired by a Tribal member or the Tribe under this Act unless and until that individual submits evidence of Workers' Compensation insurance coverage or an exemption of the requirement to the Department of Building and Safety.

SMTC 11.6 Fees

11.6.1 The General Council shall be authorized to impose fees to obtain a permit under this Act. A schedule of such fees shall be maintained on file with the Department of Building and Safety and shall be open for inspection by Tribal members and any contractors, architects, and civil engineers hired by a Tribal member or the Tribe.

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11.6.2 All fees shall be reduced by 15% for any Construction work that is undertaken by an Indian Contractor.

11.6.3 A Tribal member may submit a request in writing to the General Council for a waiver of any fees imposed under this Act. The General Council shall have the authority to waive any fees required under the Act upon a determination that the imposition of the fee would result in a significant hardship to the Tribal member.

SMTC 11.7 Cultural Resources and Environmental Protection

Nothing herein is intended to relieve the Tribe or an individual Tribal member from any liability, responsibility, or obligation it may have under any Tribal or federal resource protection statutes, regulations, or other applicable law.

SMTC 11.8 Department of Building and Safety

11.8.1 There is hereby established by the Tribe a department to be known as the Department of Building and Safety.

11.8.2 The Department of Building and Safety shall be headed by the Tribal Building Officer, who shall report to the Tribe's Chief Executive Officer.

11.8.3 The Tribal Building Officer shall engage a Certified Building Official, who shall be an at-will employee or consultant of the Tribe that reports to the Tribal Building Officer. The position may be full-time, part-time or on a consultant basis as deemed necessary by the Tribal Building Officer.

11.8.4 In order to qualify for the position of Certified Building Official, a prospective candidate must:

a. hold a "Certified Building Official" certificate issued by the Council of American Building Officials or an equivalent credential generally recognized in the building industry qualifying the candidate to certify Construction as being in compliance with building and safety codes;

b. have a minimum of three years verifiable experience as a building official or equivalent experience for a local government, or a minimum of five consecutive years of experience in private industry as a certified construction inspector; and

c. submit to the Tribal Building Officer on an annual basis proof of compliance with all applicable continuing education requirements of the State of California for his or her primary job function.

11.8.5 The Certified Building Official shall obtain the services of Construction Planners, Construction Inspectors and Plans Examiners, whose qualifications and credentials must first be submitted to the Tribal Building Officer for approval. All Construction Planners, Construction Inspectors and Plans Examiners must be certified in their primary job function by the International Council of Building Officials and be in compliance with all applicable required continuing education requirements of the State of California for their position.

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SMTC 11.9 Enforcement

11.9.1 The Certified Building Official shall implement all procedures and requirements of the Act and the Building Regulations and shall monitor all planned or ongoing Construction on the Reservation to ensure compliance with all provisions of the Act, sections of the Building Regulations and conditions of any permit.

11.9.2 The Certified Building Official shall have the authority to cite any violation of any provisions of the Act, sections of the Building Regulations or permit conditions by issuing a written Notice of Violation. All Notices of Violation shall cite the particular provisions of the Act, sections of the Building Regulations or conditions of the permit that have been violated. Copies of all Notices of Violation shall be delivered to the Office of the Tribal Secretary within three (3) business days of serving the Notice of Violation on the individual.

11.9.3 The Certified Building Official shall investigate any complaint submitted in writing to the Department of Building and Safety relative to any alleged violation of provisions of the Act, sections of the Building Regulations or permit conditions and shall submit a written report to the Tribal Building Officer as to his or her findings. The Tribal Building Officer shall review all findings of investigations by the Certified Building Official and shall report any investigations substantiating a violation that has not been Corrected within five (5) calendar days of issuing a Notice of Violation to the Business Committee.

SMTC 11.10 Penalties

11.10.1 Tribal members shall be held responsible for any Notice of Violation which is issued relative to a condition created by the Tribal member or a contractor working on a Tribal member's behalf.

11.10.2 Any condition which is the subject of a Notice of Violation which is not Corrected within five (5) calendar days of receipt of the Notice of Violation shall be punishable by an initial fine of \$1,000.00 for each violation. Any conditions that have not been Corrected within ten (10) calendar days after receipt of the Notice of Violation shall be punishable by an additional fine of \$250.00 for each day the violation continues until the violation is Corrected.

11.10.3 The Tribal Building Officer shall notify the Business Committee in writing of violations that have not been Corrected within five (5) days and any penalties or fines imposed.

11.10.4 All fines shall be payable within thirty (30) days after the imposition of the fine. All fines issued to a contractor hired by a Tribal member shall be imposed against, and payable to the Tribe, by the Tribal Member. All fines shall be deposited in the Tribal fund for providing education to Tribal members in accordance with the San Manuel Educational Benefits Act.

11.10.5 All fines imposed against a Tribal member shall constitute a lien against any monies payable by the Tribe to the Tribal Member. The Tribal Treasurer or other person who disburses treasury funds shall be notified within three (3) business days of such lien and if such funds are unpaid when Tribal Disbursements are made, the Treasurer shall direct any fine for violations of this Act be withheld from the Tribal Disbursement due to the Tribal member and shall instead direct such amounts be credited to the Tribal fund for providing education to Tribal members in accordance with the San Manuel Educational Benefits Act.

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SMTC 11.11 Appeal Process

11.11.1 Except as provided in Section 11.11.2 of this Act, any Tribal member or non-Tribal member, who has been issued a Notice of Violation shall have as their sole and exclusive remedy, the right to file a notice of appeal with the San Manuel Tribal Court.

a. A notice of appeal must be filed in the San Manuel Tribal Court within twenty (20) days of the date of receipt of the issuance of a Notice of Violation.

b. All appeals shall be adjudicated in accordance with Tribal law and the Administrative Review Rules of the San Manuel Tribal Court Rules.

c. Should the Tribal member or non-Tribal member successfully appeal the Notice of Violation, any monetary fine associated with the Notice of Violation that has been paid shall be reimbursed to the Tribal member within seventy-two (72) hours of the Tribal Court issuing its decision.

11.11.2 If the Tribal Court is no longer in existence, then:

a. Non-Tribal members who have been cited with a Notice of Violation shall have as their sole and exclusive remedy the right to file a petition for relief with the Tribe's Business Committee.

1. Any non-Tribal member appealing a Notice of Violation must submit the appeal in writing to the Business Committee within twenty (20) days of the date of issuance of the Notice of Violation.

2. Complaints shall be submitted in writing, and at the discretion of the Business Committee, the complainant may be allowed to present evidence.

3. The Business Committee will render a decision within ninety (90) days of hearing the appeal. All such decisions will be final and non-appealable.

b. Tribal members served with a Notice of Violation may appeal the violation and any penalty or fine associated therewith to the General Council.

1. Any Tribal member appealing a Notice of Violation must submit the appeal in writing to the General Council within twenty (20) days of issuance of a Notice of Violation.

2. A hearing before the General Council shall be scheduled for the next regular meeting of the General Council.

3. The Tribal Chairperson shall preside over such hearing, which shall be conducted informally. The Tribal member shall be given an opportunity to be heard and to present evidence and argument reasonably related to the alleged violation. At the conclusion of the presentation of evidence and arguments, the Chairperson shall call for a vote of the General Council, which by majority vote shall determine whether the appeal is meritorious.

4. If the General Council determines an appeal to be meritorious, the General Council shall rescind any penalties imposed pursuant to the Notice of Violation and any

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amounts paid pursuant to the Notice of Violation shall be reimbursed to the Tribal member within seventy-two (72) hours of the Tribal Court issuing its decision.

5. Determinations by the General Council shall be final and non-appealable.

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