

AGUA CALIENTE BAND OF CAHUILLA INDIANS
TRIBAL COUNCIL

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SAVANA R. SAUBEL SECRETARY-TREASURER • JOHN R. PRECKWINKLE III MEMBER • VIRGINIA SIVA-GILLESPIE MEMBER

ORDINANCE NO. 16-2024

**AN ORDINANCE OF THE AGUA CALIENTE BAND OF
CAHUILLA INDIANS DELETING EXISTING CHAPTER
10.12 AND ADDING A NEW CHAPTER 10.12 CHILD
WELFARE TO THE AGUA CALIENTE TRIBAL CODE**

WHEREAS, the Agua Caliente Band of Cahuilla Indians (the “**Tribe**”) is a federally recognized Indian tribe governing itself according to the Constitution and By-Laws of the Agua Caliente Band of Cahuilla Indians adopted by the Tribe on June 28, 1955 (the “**Constitution**”); and

WHEREAS, the Tribe, acting by and through its duly elected Tribal Council and pursuant to Articles II and IV (a) of the Constitution, exercises inherent sovereign authority and jurisdiction over the territory within the exterior boundaries of the Agua Caliente Indian Reservation (the “**Reservation**”) and over other lands which may be added to the Reservation; and

WHEREAS, pursuant to Article V (a) and (b) of the Constitution, the Tribal Council, among other things, is empowered to administer the affairs and manage the business of the Band and to enact ordinances and resolutions pertaining to Tribal affairs and to take all proper means to enforce the same; and

WHEREAS, the Tribal Council desires to add the chapter noted above to the Agua Caliente Tribal Code.

NOW, THEREFORE, the Tribal Council of the Agua Caliente Band of Cahuilla Indians does hereby ordain as follows:

SECTION 1. All the recitals set forth above are true and correct, and the Tribal Council so finds and determines.

SECTION 2. Existing Chapter 10.12 of the Agua Caliente Tribal Code is hereby deleted in its entirety.

SECTION 3. New Chapter 10.12 is hereby added to the Agua Caliente Tribal Code to read as follows:

Sec. 10.12.010. Purpose and authority.

The purpose of this chapter is to ensure that any action in a state court or the court of another



to remove an Indian child from a parent or guardian is consistent with the Agua Caliente Band of Cahuilla Indians' policy of protecting the relationship between tribal members and their Indian children, and those children and the tribal community, culture, and heritage. The Tribe enacts this chapter as an exercise of its sovereignty, as authorized by article V(a) of the Constitution and Bylaws of the Agua Caliente Band of Cahuilla Indians.

Sec. 10.12.020. Authorized representatives.

In addition to employing legal counsel, the Tribal Council may authorize lay advocates, as appointed by resolution, to represent the Tribe in ICWA matters.

Sec. 10.12.030. Response to inquiries.

In matters of child welfare, the Tribe recognizes the importance of consistency in responding to requests to verify whether a minor involved in a child welfare proceeding is an Indian child of the Tribe. Accordingly, the Tribe, through its authorized representatives, will respond in writing to all requests for verification of a child's Indian status in a timely manner.

Sec. 10.12.040. Intervention.

- (a) The Tribe shall intervene in all removal proceedings involving an Indian child.
- (b) When the Tribe receives notice of a removal proceeding involving a child that is or may be an Indian child, the Tribe shall promptly confirm if one or more of the child's alleged parents are enrolled Members of the Tribe and whether the child is an enrolled Member, the child has a pending enrollment application, the child has been determined to be ineligible for enrollment, or no enrollment application has ever been submitted on the child's behalf.
- (c) If the Tribe receives notice of a removal proceeding involving a child who is not enrolled and whose parentage has not been confirmed in accordance with section 10.12.050, the Tribe shall appear at and monitor the proceedings, but not intervene, until the child's parentage is established in accordance with section 10.12.050. If parentage has not been established within sixty (60) days of the date that the Tribe receives written notice of the removal proceeding, the Tribe shall cease to appear at and monitor the proceedings, provided that the Tribe shall subsequently intervene if the child is later enrolled or determined to be eligible for enrollment through the establishment of parentage.

Sec. 10.12.050. Parentage of Indian child.

- (a) Pursuant to the Tribe's Constitution and Bylaws, the biological child of a Tribal Member is not eligible for enrollment when the child does not possess at least one-eighth degree of Indian blood and the Tribal Member was never married to the child's other biological parent. Consequently, such a child is not an Indian child, as defined in section 10.02.020.



(b) When the biological child of a Tribal Member is not enrolled but is eligible for enrollment because his biological parents are married or were married at the time of the child's conception, birth, or thereafter, the child shall not be considered an Indian child, as defined in section 10.12.020, unless both parents have established parentage through a DNA test from an approved testing laboratory. The Tribe will pay for the costs of the testing.

(c) When a child's biological parent is deceased, is incarcerated and the prison will not cooperate with DNA testing, or does not have custodial rights, parentage may be established through a DNA sample from a close living relative if the degree of reliability from such a sample is sufficiently high according to the testing laboratory.

(d) The Tribal Council or its designee may by resolution or other writing certify that a Tribal Member father of an Indian child has established paternity when parentage has been established pursuant to subsection (b) of this section.

Sec. 10.12.060. Indian child's eligibility for membership in other tribes.

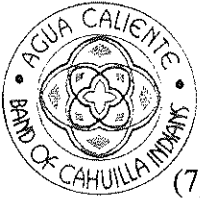
(a) The Tribe shall not intervene in a removal proceeding involving an Indian child who is not enrolled in the Tribe when the child is a member of another tribe, or the child is eligible for membership in another tribe and the other tribe has intervened.

(b) If an Indian child becomes a member of another tribe after the Tribe has intervened, the Tribe shall withdraw from the case. If an Indian child is eligible for membership in another tribe, but not a member of that tribe, and the Tribe intervened but subsequently withdraws from the case, the Tribe may then intervene in the case.

Sec. 10.12.070. Placement of Indian children.

(a) The order of preference for placement in foster care or a preadoptive placement, in the absence of good cause to the contrary, as determined by the Tribal Council or its designee, shall be:

- (1) A member of the Indian child's immediate family residing near the child's current home;
- (2) A member of the Indian child's extended family residing near the child's current home;
- (3) A member of the Indian child's immediate family;
- (4) A member of the Indian child's extended family;
- (5) A Member of the Tribe residing near the Indian child's current home;
- (6) A Member of the Tribe not residing near the Indian child's current home;



- (7) An Indian family residing near the Indian child's current home;
- (8) An Indian family;
- (9) A non-Indian foster home licensed, approved, or specified by the Tribe; or
- (10) An institution for children approved by the Tribe or operated by an Indian organization, which has a program suitable to meet the Indian child's unique needs.

(b) Although it is the Tribe's position that adoption outside the Tribal community is not in the best interests of the child, if an Indian child is adopted by a person who is not a Tribal Member, the Tribe shall pursue a post-adoption contact agreement providing for continued contact with the Tribe through attendance at cultural and community events. The Tribe's order of preference for adoptive placement, in the absence of good cause to the contrary, shall be:

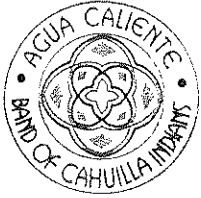
- (1) A member of the child's immediate family.
- (2) A member of the child's extended family.
- (3) A person designated by the child's parent or approved by the Tribal Family Services Department.
- (4) A member of the Tribe.
- (5) A member of an Indian tribe to which the child has hereditary connections.
- (6) A member of any Indian tribe.
- (7) An Indian foster family licensed and approved pursuant to Chapter 10.22.
- (8) A foster family licensed and approved pursuant to Chapter 10.22.
- (9) An appropriate non-Indian person.

(c) In any event, the agency or court effecting the placement shall follow the prioritization order so long as the placement is the least restrictive setting appropriate to the particular needs of the child.

Sec. 10.12.080. Indian custodians.

(a) Upon a notarized petition of one or both parents of an Indian child, the Tribal Council or its designee may award legal custody of the Indian child to an Indian person at least 18 years of age, provided the person is willing to promote the child's cultural ties to the Tribe and has submitted to a drug test and a criminal background investigation and has not been found guilty of any crime that would make the person unsuitable for placement. Without limiting the generality of the foregoing, any conviction for a sexual offence against a minor or for felony child abuse or neglect, no matter how old, or a conviction for a violent felony within the last five years, makes a person unsuitable for placement.

(b) If there is a pre-existing custody order in place, the petition must be signed by the parent



having sole legal custody of the Indian child or, if the parents have joint legal custody, the petition must be signed by both parents.

Sec. 10.12.090. Tribal customary adoption.

(a) The Tribal Council or its designee is authorized to select and implement tribal customary adoption as a permanent plan for an Indian child in an ICWA matter. In an ICWA matter before the superior court of the state, the Tribal Council or its designee shall ensure that a tribal customary adoption meets the requirements of Welfare and Institutions Code Section 366.24.

(b) Nothing herein is intended to create a presumption that tribal customary adoption is the preferred permanent plan for an Indian child or a presumption that termination of parental rights is not in the Indian child's best interest even when tribal customary adoption is selected as the preferred permanent plan; the Tribal Council shall consider the unique circumstances of each Indian child custody proceeding and determine the most appropriate permanent plan on a case-by-case basis. The Tribal Council shall also take into consideration the wishes of the Indian child's parents, Indian custodian, members of the child's immediate and extended family, and, when the child is at least 12 years old, the wishes of the Indian child.

SECTION 4. The Tribal Council hereby finds that the adoption of this Ordinance does not constitute a "Major Tribal Action" requiring the preparation of an environmental assessment or an environmental impact statement.

SECTION 5. If any section, subsection, phrase, or clause of this Ordinance is for any reason held to be unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Tribal Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unlawful or unconstitutional.

SECTION 6. Nothing contained in this Ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the Agua Caliente Band of Cahuilla Indians' sovereign immunity.

SECTION 7. The Tribal Council expressly reserves the right to alter, amend, or repeal this Ordinance if it determines that such action is in the best interest of the Tribe.

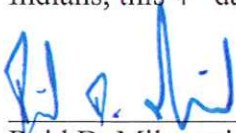
SECTION 8. This Ordinance shall become effective immediately upon its adoption.



SECTION 9. Upon the effective date of this Ordinance, any and all prior inconsistent resolutions, policies, ordinances, and/or procedures of the Tribe that pertain to the subject matter hereof are hereby repealed, superseded, and/or amended to comply with this Ordinance.

SECTION 10. Within fifteen (15) days after adoption, Tribal staff shall cause a summary of this Ordinance to be published one time in a newspaper of general circulation published and circulated on the Reservation.

BE IT ADOPTED AND ENACTED by the Tribal Council of the Agua Caliente Band of Cahuilla Indians, this 4th day of June, 2024.



Reid D. Milanovich, Chairman



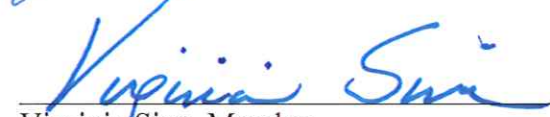
Candace C. Patencio, Vice Chairman



Savana R. Saubel, Secretary-Treasurer



John R. Preckwinkle III, Member



Virginia Siva, Member

I, the undersigned, the Secretary-Treasurer of the Agua Caliente Band of Cahuilla Indians, hereby certify that the Tribal Council is composed of five members of whom 5, constituting a quorum, were present at a meeting whereof, duly called, noticed, convened and held on this 4th day of June, 2024; that the foregoing Ordinance was duly adopted at such meeting by the affirmative vote of 4-0-0 and that said Ordinance has not been rescinded or amended in any way.



Savana R. Saubel, Secretary-Treasurer