



AGUA CALIENTE BAND OF CAHUILLA INDIANS
TRIBAL COUNCIL

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ORDINANCE NO. 26-24

AN ORDINANCE OF THE AGUA CALIENTE BAND OF CAHUILLA INDIANS MAKING CLARIFYING NON-SUBSTANTIVE CHANGES TO VARIOUS PROVISIONS OF THE AGUA CALIENTE TRIBAL CODE AND AMENDING THE TITLE OF TITLE 10 AS WELL AS SECTIONS OF CHAPTERS 1.01, 2.60, 3.16, 10.02, and 10.14.

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, since the adoption of the Constitution in 1955, there have been hundreds of amendments to Tribal law and thousands of changes in federal law; and

WHEREAS, ordinances adding new chapters or substantively amending existing chapters are brought forward to the Tribal Council on an individualized basis; and

WHEREAS, over time, there are changes within the administrative organizational structure within the Tribal Government and changes in statutory and decisional law rendering certain provisions of the code obsolete or unnecessarily duplicative; and

WHEREAS, over time, there are existing code sections which need to be added elsewhere in the Tribal Code to ensure clarity and consistency throughout the Code; and

WHEREAS, over time, typographical errors and other non-substantive errors are identified with the Code that must be corrected to ensure the proper meaning, application, and enforceability of the Code; and



WHEREAS, over time, there are clarifications that should be made to the existing Code, and which do not change the substantive meaning but make explicit what has been implicit; and

WHEREAS, these amendments will ensure that the Code is current and consistent with existing statutory and decisional law, will delete or repeal obsolete and/or unnecessarily duplicative provisions Tribal law, and will make non-substantive changes; and

WHEREAS, the Tribal Council desires to amend various chapters of the Agua Caliente Tribal Code noted above in the most efficient manner possible.

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. The title of Title 10 of the Tribal Code is hereby amended to read as follows:

MEMBERSHIP AND FAMILY SERVICES.

SECTION 3. Chapter 1.01 of the Tribal Code is hereby amended to add Section 1.01.110 as follows:

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Sec. 1.01.110. No Waiver of Sovereign Immunity.

Nothing in this Code or the ordinance adopting this Code is intended to, nor does in any way, limit, alter, restrict or waive the Agua Caliente Band of Cahuilla Indians' sovereign immunity, except to the extent expressly stated therein.

SECTION 4. Chapter 2.60 of the Tribal Code is hereby amended to add or amend the following definitions in Sec. 2.60.020. Definitions, which shall read as follows:

(-----)

Chief judge means the Tribal court judge appointed by Tribal Council to oversee the **management and operation of the** Tribal court and Tribal court staff.

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General Order means an administrative order issued by the chief judge that governs the operation, policies, rules, and procedures of the Tribal court.

SECTION 5. Section 2.60.040 of the Tribal Code is hereby amended to read as follows, and the subsequent subsections shall be renumbered accordingly:

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(g) General Orders. The chief judge shall have the power to issue general orders that govern the operation, policies, rules, and procedures of the Tribal court, which do not conflict with Tribal law.

SECTION 6. Section 3.16.090(d)(2) of the Tribal Code is hereby amended to read as follows:

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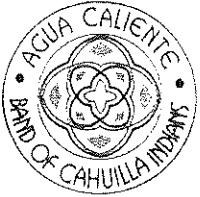
Discovery. Discovery in the Tribal court action shall be governed by ~~rules of~~ **evidence rules of court and civil procedure** adopted by the Tribal court.

SECTION 7. Section 10.02.030 of the Tribal Code is hereby amended to read as follows:

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Neglect means, but is not limited to:

- (1) negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, and abandonment.
- (2) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.
- (3) The negligent failure of an elder or dependent adult to exercise that degree of self-care that a reasonable person in a like position would exercise.
- (4) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
- (5) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment. **A child receiving treatment by spiritual means or not receiving**



specified medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

(6) Failure to protect from health and safety hazards.

(7) Failure to prevent malnutrition or dehydration.

(8) Failure of an elder or dependent adult to satisfy the needs specified in subsections (4) to (7), inclusive, for himself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

(9) Indigence or other conditions of financial difficulty, including, but not limited to, poverty and the inability to provide or obtain clothing, home or property repair, or childcare, by themselves, do not constitute "neglect".

SECTION 8. Section 10.14.100(d) of the Tribal Code is hereby amended to read as follows:

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Circumstances Mandating Report of Suspected Abuse or Neglect: abuse, abandonment, abduction, or neglect. Any mandated reporter who, in his professional capacity, or within the scope of his employment, has observed or has knowledge of an incident that reasonably appears to be abuse, abandonment, abduction, or neglect, or is told by a child that he has experienced this behavior, including an act or omission, constituting abuse, abandonment, abduction, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days to the mandated reporting agency specified in Section 10.14.090 above. **General neglect does not include a parent's economic disadvantage and a child must be at substantial risk of suffering serious physical harm or illness to fall within the definition of general neglect.**

SECTION 9. Section 10.14.140 of the Tribal Code is hereby amended to add Section 10.14.140(e) as follows:

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(e) A child should not be removed from their parents, Indian custodian, or guardian based solely on conditions of financial difficulty.

SECTION 10. Section 10.14.230(d)(1) of the Tribal Code is hereby amended to read as follows:

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(d) *Scope of Review.* At a status review hearing the Tribal Court shall review, on the record, the compliance with the case service plan prepared pursuant to Section 10.14.220(c) and the previous orders of the Tribal Court, including:

(1) Services. Compliance with the case service plan with respect to services provided to the child and his parent, Indian custodian, or guardian and whether the parent, Indian custodian, or guardian has complied with and benefited from those services. **A parent, Indian custodian, or guardian shall not be found non-compliant with the court-ordered case service plan if the Tribal Court finds that they are unable to pay for a service or that payment would create an undue hardship or that the caseworker has not provided them with a comparable free service that is accessible.**

SECTION 11. 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 12. 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 13. 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 14. 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 15. This Ordinance shall become effective immediately upon its adoption.

SECTION 16. 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 17. 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 1st day of October, 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 1st day of October, 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