

Native American Preference

CHAPTER 31. NATIVE AMERICAN PREFERENCE ORDINANCE¹

SMTC 31.1 Title

This Chapter shall be known and cited as the “San Manuel Native American Preference Ordinance” (hereinafter “Ordinance”).

SMTC 31.2 Statement of Purpose

The San Manuel Band of Mission Indians is dedicated to protecting the political integrity, economic security and the health and welfare of the Tribe, and to promoting the economic self-sufficiency of Tribal Citizens and all Native Americans. This Ordinance codifies the San Manuel Band of Mission Indians policy of extending a preference to qualified employee candidates who are Tribal Citizens and Native Americans in all aspects of employment within the jurisdiction of the Tribe as permitted by federal law.

SMTC 31.3 Findings

By adopting this Ordinance, the San Manuel General Council, the duly-authorized governing body of the San Manuel Band of Mission Indians, finds the following:

31.3.1 Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2008e *et seq.*) does not apply to federally recognized Indian tribes such as the San Manuel Band of Mission Indians; however, the Tribe believes in equal employment opportunities for all employees and applicants.

31.3.2 The Tribe, its agencies and enterprises shall not discriminate against Employees or Applicants with respect to hiring practices; provided the Tribe, its agencies and enterprises are not precluded from extending Native American preference to Qualified Applicants and Employees or other contracting parties as set forth in this Ordinance.

SMTC 31.4 Definitions

31.4.1 “**Tribe**” means the San Manuel Band of Mission Indians, its agencies and enterprises.

31.4.2 “**Employee**” means a person, other than an independent contractor, employed by or in the service of the San Manuel Band of Mission Indians, its agencies and enterprises, under any contract of hire, express or implied, oral or written, where the Tribe, its agency, or enterprise, has the power or right to control and direct such individual in return for which such individual receives a salary or wages. For purposes of this Ordinance, Employee shall not include General Council members (unless employed by the Tribe), independent contractors, contractors, and outside consultants.

31.4.3 “**Applicant**” means any person who has applied for a position with the Employer.

31.4.4 “**Qualified**” means possessing the minimum threshold requirements.

¹ Adopted by the San Manuel General Council on June 9, 2009.

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31.4.5 **“Indian Tribe”** means any tribe, including Alaska Native villages, recognized by the United States as eligible for services from the federal government.

31.4.6 **“Native American”** means any person who is a member of any Indian Tribe.

31.4.7 **“Tribal Citizen”** means any duly enrolled citizen of the Tribe.

31.4.8 **“Hiring Practices”** means activities related to the retention of an Employee or Applicant including, but not limited to, selection, hiring, promotion, transfer, lay-off, recall and termination. “Hiring Practices” does not include the awarding of shifts, breaks, dress code, or other activities unrelated to the retention of an Employee or Applicant.

31.4.9 **“Native American-Owned Business”** means the business is 51% or more owned and managed by a Native American, as authenticated by the Native American who claims ownership.

31.4.10 **“Tribal Citizen-Owned Business”** means the business is 51% or more owned and managed by a Tribal Citizen, as authenticated by the Tribal Citizen who claims ownership.

SMTC 31.5 Native American Preference in Hiring Practices

Unless otherwise prohibited by applicable federal law, the Tribe shall give preference in all aspects of its Hiring Practices to Qualified Employees and Applicants who are Native American, with the first order of preference to Tribal Citizens.

SMTC 31.6 Eligibility for Native American Preference

31.6.1 Employees and Applicants shall demonstrate they meet the definition of “Native American” as set forth in this Ordinance by providing all of the following:

- (a) Proof of tribal membership, such as identification cards or certificates; and
- (b) Contact information for the tribe’s membership office to which the Employee or Applicant claims membership.

31.6.2 Employees and Applicants shall meet the minimum qualifications for the position for which they are applying to be eligible for the preference.

31.6.3 Native American Preference shall only apply in circumstances where Employees or Applicants are similarly qualified for the position for which they are applying.

SMTC 31.7 Exemption

Every effort shall be made to apply Native American preference to key positions that require advanced degrees, license or other specialized skills, but Native American preference shall not be required where candidate qualifications are so disparate as to warrant the hiring of a non-Native American or a Native American who is not a Tribal Citizen.

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SMTC 31.8 Covered Positions

Except as set forth in this Ordinance, Native American preference shall apply to all positions and job classifications, including entry level, management and executive positions, and administrative, supervisory and professional classifications.

SMTC 31.9 Native American Preference by Other Employers

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SMTC 31.10 Native American Preference in Contracting

31.10.1 Contracts, sub-contracts and the procurement of services, materials, supplies and equipment required for work to be performed for the Tribe shall be awarded to Qualified Native American-owned businesses that submit responsive bids for any work advertised as part of the standard procurement process; provided first preference shall be given to Qualified Tribal Citizen-owned businesses.

31.10.2 When a Qualified Native American-owned business comes within ten percent (10%) of the low bid or price quote, the Native American-owned business shall have the opportunity to meet that figure; provided the first opportunity shall be given to Qualified Tribal Citizen-owned businesses.

31.10.3 When a Qualified business is owned by a Tribal Citizen, the Tribal Citizen(s) who own(s) the business and immediate family members shall not participate in the deliberation process for awarding such contracts, subcontracts or other procurement device, and shall abstain from voting. For purposes of this Ordinance, "immediate family member" means the Tribal Citizen's spouse, grandparent, parent, sibling or child.

SMTC 31.11 Prohibited Practices

31.11.1 Tribal personnel shall not engage in Hiring Practices designed to circumvent Native American Preference by requiring criteria that is not legitimately related to the performance of any position or work.

31.11.2 The Tribe shall not take any adverse action or otherwise retaliate in any way against any person who attempts to enforce the requirements set forth in this Ordinance.

SMTC 31.12 Enforcement

31.12.1 The following shall be responsible for enforcing and implementing this Ordinance:

(a) The Human Resources Department shall have the responsibility and authority to implement and enforce the provisions of this Ordinance, with the exception of practices related to Section 31.10 regarding the awarding of contracts.

(b) The following government entities shall have the responsibility of implementing and enforcing the provisions of this Ordinance with respect to practices in their respective departments or divisions related to Section 31.10 regarding the awarding of contracts:

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- (i) San Manuel Business Committee;
- (ii) San Manuel Education Committee;
- (iii) San Manuel Judiciary Committee;
- (iv) San Manuel Gaming Commission; and
- (v) Other governmental entities established in accordance with tribal law that are authorized to award contracts.

31.12.2 Grievances for alleged violations may be filed as follows:

(a) Employees and Applicants who believe section 31.8 of this Ordinance was not properly applied to them may file a grievance with the Human Resources Director, who shall review the grievance and attempt to resolve the matter, after which s/he will issue a decision to the Employee or Applicant with a notice of the time period to appeal the matter to the Human Resources Director.

(b) Business entities that believe section 31.10 of Ordinance was not properly applied to them may file a grievance with the government entity responsible for the award. The government entity shall review the grievance and attempt to resolve the matter, after which it will issue a decision to the business entity with a notice of the time period to appeal the matter to the government entity.

31.12.3 If any Employee, Applicant or business entity does not agree with the decision issued under Section 31.12.2, s/he must inform the tribal party that issued the decision in writing within ten (10) days of the decision, after which the tribal party shall refer the matter to the San Manuel Tribal Court for resolution. Such decisions shall be considered administrative decisions for purposes of judicial review. If no objection is received within the ten (10) day time period, the tribal party shall implement the decision and close the matter.

31.12.4 The San Manuel Tribal Court shall decide the matter based on the evidence provided by the parties in accordance with tribal law and court rules and issue appropriate orders as needed to enforce the provisions of this Ordinance.

31.12.5 Nothing herein shall be construed to authorize a private cause of action in any judicial forum except as set forth in this section.

31.12.6 Nothing herein shall be deemed to constitute a waiver of the Tribe's sovereign immunity from unconsented suit.

SMTC 31.13 General Provisions

31.13.1 This Ordinance repeals all previous Native American preference policies, resolutions and laws issued by the Tribe.

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31.13.2 In the event any provision of this Ordinance is found to be invalid or unenforceable for any reason, such determination shall not effect the remaining terms.

31.13.3 This Ordinance may be amended in the manner provided for the adoption of tribal ordinances. Amendments and additions to this Ordinance shall become a part of the Ordinance for all purposes and shall be codified and incorporated herein in a manner consistent with its numbering and organization.

31.13.4 Adopted by the San Manuel General Council June 9, 2009.

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