

BISHOP PAIUTE TRIBE

NUISANCE ORDINANCE NO. 2000-03

101. Findings; Declarations of Policy

The Bishop Tribal Council (Tribal Council), as the federally recognized governing body for the Bishop Paiute Tribe (Tribe), after careful review, has determined that there is a need for Tribal governmental regulations in the areas dealing with both private and public nuisances.

The Tribal Council, pursuant to its inherent sovereignty, exercises its authority in providing for a comprehensive regulation of public and private nuisances issues.

102. Declarations of Policy

It is the policy of this ordinance to promote the general health, safety and welfare of all residents of the Bishop Paiute Reservation and, in furtherance of the sovereign right of self-governance of the Tribe, the Tribal Council declares its commitment to the establishment and maintenance of rules and regulations covering the subject matter of this ordinance.

103. Definition of Nuisance

The definition of nuisance is anything that either:

- (1) Is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life and property; or
- (2) Unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin, or any Tribal park, Tribal square, street or highway.

The following are examples of a nuisance prohibited by this ordinance, but are not all-inclusive:

- (1) **Attractive nuisance.** Any area, structure or object which by its nature, location or character would tend to attract and substantially endanger the safety of any minor person.
- (2) **Air pollution.** The emission or escape of smoke, soot, noxious acids, fumes, stenches, gases, industrial dust, or particulate matter within or affecting the Bishop Paiute Reservation in such quantities as to annoy, discomfort, injure or inconvenience the health of any person, or threaten or cause substantial injury to property, but excluding smoke emanating from residential fireplaces and legally authorized and/or permitted controlled burns.

- (3) Water Pollution. Such alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters, or such discharge into any surface or underground body of water as will, or is likely, to violate tribal Water Quality Standards or render such waters harmful, detrimental or injurious to:
 - (a) public health, safety or welfare, or
 - (b) domestic, commercial, industrial, recreational, aesthetic, ceremonial, agricultural or other legitimate uses, or
 - (c) livestock, wild animals, birds, fish, or other aquatic life.
- (4) Unlawful dredge or discharge. Causing any surface or groundwater to be diverted, obstructed, or impeded, or discharging any material into any waters without legal authority.
- (5) Groundwater depletion. Extracting more water from any groundwater source underlying the Bishop Paiute Reservation than can be extracted annually, year after year, without eventually depleting the groundwater source.
- (6) Refuse and waste. Any material, regardless of its market value, which, by reason of its location or character, is unsightly or interferes with the reasonable use and enjoyment of adjacent properties; or which has detrimental effects upon adjacent property values; or which would hamper or interfere with the containment of fire upon the premises.
- (7) Noise. All loud or unusual noises and annoying vibrations which offend the peace and quiet of persons of ordinary sensibilities.
- (8) Nuisances in general. Any act or condition which, by its nature, character, or location, interferes with the reasonable use and enjoyment of adjacent or nearby properties; which unreasonably annoys, harms, or endangers the safety, health, comfort, or repose of any person; or which has a detrimental effect upon adjacent or nearby property values. Nuisances in general shall include, but not be limited to the following:
 - (a) Erecting or continuing to use any building or structure contrary to the lawful authority, permit, or license issued by the Tribe or any provision of the Tribal Law and Order Code specifically designed to control, limit, or regulate such building or structure.
 - (b) All explosives, inflammable liquids, corrosive, reactive, toxic or other dangerous substances, including but not limited to those substances deemed hazardous pursuant to 42 U.S.C. § 9601(14)

(defining "hazardous substance" under C.E.R.C.L.A., the federal Superfund law) stored in any manner, in any amount other than that permitted by ordinance.

- (c) Zoning violation. Any violation of the Tribe's zoning ordinance.
 - (d) Building code violation. Any violation of the tribal building code.
 - (e) Fire code violation. Any violation of the tribal fire code.
- (3) Any person or entity causing or creating a nuisance as herein defined is guilty of a violation of this ordinance.
- (4) Nothing which is done or maintained under the express authority of an ordinance or lawful permit or license issued by the Bishop Tribal Council shall be a nuisance.

104. Authorized Official

An authorized official means any person or persons designated and empowered by the Bishop Tribal Council to enforce the provisions of this ordinance.

- (1) Citation for Civil Infraction. If an authorized official determines that a public nuisance exists, that official may sign and serve on the persons alleged responsible for a violation of this Ordinance a written citation that contains a notice to appear in Tribal Court, the name and address of the person who is accused, a description of the alleged violation, the time and place where and when the person shall appear in Tribal Court, and such other pertinent information as may be necessary. If the citation includes information whose truthfulness is attested to as required under the general laws of this Tribe, then the complaint, when filed with the Tribal Court by the authorized official, shall be deemed to be a certified complaint.
- (2) Service of Citation. A civil infraction citation for a violation of this Ordinance may be served in any of the following ways:
- (A) By personal service thereof on the person determined responsible for the violation. a copy of the citation signed by the person shall suffice as proof of service.
 - (B) By mailing the notice by certified mail, return receipt requested, to the responsible person at his or her last known address.
 - (C) By posting the notice in a conspicuous place on the offending property; provided however that service by posting shall only be used when the authorized official cannot determine the last known address of the person.
- (3) Alternative Remedies. At the discretion of an authorized official, or the Tribal Council, the following remedies may be pursued:

- (A) Action in the Tribal Court for a temporary restraining order and injunctive relief, including an order to abate the nuisance or to eject a trespasser; or
 - (B) Action in the Tribal Court for the prescribed civil penalty; or
 - (C) Action in the Tribal Court for money damages; or
 - (D) A combination of any or all of the above.
- (4) Emergency Action. If an authorized official determines that a public or private nuisance exists and may present an imminent and substantial threat to the health, safety, peace or environment of the community, the authorized official may take such actions as may be necessary to protect the interests governed by this Ordinance. Before an authorized official may take emergency action in the form of request for a temporary restraining order or injunction, a citation for violation of this Ordinance must be served on the alleged responsible party(ies) in accordance with Sections 1 and 2.
- (5) Order to Abate and Other Remedies. If an action brought under this Ordinance seeks to abate the nuisance or other remedy , and the Court finds by a preponderance of the evidence a violation of this Ordinance, the Court shall enter an order directing that the nuisance be abated, or such other proper remedy as set out in Section 3 above.
- (6) Enforcement of orders to abate. All orders entered by the Court directing that a nuisance be abated shall be carried out by an authorized official. The authorized official shall give notice to the defendant and to any person who is occupying the land on which the public nuisance exists. The defendant and the owner or occupier shall have an opportunity to voluntarily abate the nuisance within a specific and reasonable time. If the nuisance is not voluntarily abated, the authorized official shall cause the nuisance to be abated. The authorized official shall have the authority to authorize any and all action necessary to abate the nuisance in accordance with the court order. In the event abatement of the nuisance requires contract services, a fifteen percent (15%) administrative fee shall be added to the contract price of abating the nuisance. All abatement costs shall may be collected by the Tribe by all appropriate remedies, including termination of Tribal services.
- (7) Civil Penalty . The violation of any provision of this Ordinance shall be a civil infraction punishable by a fine not exceeding FIVE THOUSAND DOLLARS (\$5,000.00) for each violation. A civil infraction is not a crime and shall not subject a person to criminal punishment. The fines imposed under this section are intended as a remedial measure designed to compensate for the harm caused by the violation of this Ordinance regardless of the fact that the quantum of damage in some cases may be incapable of precise measurement. This section is also designed to provide a means to fund the administration and enforcement of this Ordinance and compensate any individuals injured by the conduct of the violator.

- (8) Money Damages for Violation. Any person who violates any provision of this Ordinance shall be strictly liable for all damages resulting from such violation, in addition to any civil fine set out in section 7. The Tribe or individual members of the Tribal community may bring suit in the Tribal Court for damages they have incurred as a result of the nuisance. The Court may order money damages, injunctive relief, costs of the suit, and attorney's fees to the prevailing party (see section 3). If liability is established and the Court orders restoration of the area affected, the Court shall make provision to assure that restoration is accomplished within a reasonable time and at the sole expense of the violator.
- (9) Separate Offense. Each day any violation of any provision of this Ordinance shall constitute a separate offense.
- (10) Tribal Immunity. Nothing in this ordinance is a waiver of the sovereign immunity of the Tribe or the Tribal Council or any official, agent or employee of the Tribe while acting in his or her official capacity. The employees and appointees of the Tribe, the members of the Tribal Council, and the personnel of the Tribal Court are cloaked with the sovereign immunity of the Tribe. No person named above shall be liable for his or her acts or failure to act under this Ordinance.
- (11) Severability. If any provision of this Ordinance or its application to any person, entity or circumstance is held to be invalid, the remainder of the Ordinance shall not be affected.
- (12) Amendments. This Ordinance and the procedures promulgated hereunder may be amended or rescinded by the Tribal Council at a duly called regular or special called meeting.
- (13) Effective Date. This Ordinance shall be effective from the date of its approval by the Tribal Council.

CERTIFICATION

The foregoing Ordinance was passed at a duly called meeting of the Bishop Tribal Council held

on the 18th day of September, 2000 with a quorum present and voting

4 AYES, 0 NAYS, 0 ABSTAINING, and 0 ABSENT.

ATTEST:

BISHOP TRIBAL COUNCIL:

Monty J. Bengochia 9/25/01
Monty J. Bengochia, Chairman

Katrina M. Stone 9/18/01
Katrina M. Stone, Council Member

Donna Vasquez 9.19.01
Donna Vasquez, Council Member

Gaylene M. Moose
Gaylene M. Moose, Tribal Council Secretary

Douglas Vega 9/18/01
Douglas Vega, Vice Chairman

Ronald Barr 9/18/01
Ronald Barr, Council Member

09/18/2000
Date:

MEMORANDUM

Date: August 22, 2000

To: Honorable Tribal Council
Cal Stafford, Tribal Administrator
Ralph LePera, Counsel

From: Alan Spoonhunter, Env. Manager

Subject: DRAFT Public Nuisance & Trespass Ordinance

Attached for your review and comment is a draft Public Nuisance and Trespass Ordinance. Developing a Draft Ordinance is one of the task deliverables under our current GAP grant agreement with EPA. This draft was prepared based on a model ordinance used by several other tribes. I would like to have a Final Draft by the end of September to submit to EPA when deliverables are due. I don't expect that the Tribe will adopt such ordinance any time soon. Although I think it would be very helpful.

Please call with questions or to discuss. Thanks.

Cc file