

BISHOP PAIUTE TRIBE

Bishop Paiute Reservation

Bishop, California

NUISANCE ORDINANCE NO. 2000-03

Adopted: September 18, 2000

Amended: June 24, 2009

Amended: July 22, 2010

BISHOP PAIUTE TRIBE

NUISANCE ORDINANCE NO. 2000-03

101. Findings; Declaration 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 government 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 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) Unlawful obstructs the free passage or use, in the customary manner, of any navigable lake, river, stream, canal, or basin, or any Tribal park, Tribal square, street or highway.
- (3) Nuisance 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 Tribal Law 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.
- (4) Any person or entity causing or creating a nuisance as herein defined is guilty of a violation of this ordinance.
- (5) 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 there is probable cause that a 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 for 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. The Tribal Court shall set the citation for hearing as soon as possible provided that the person or entity issued the citation is provided notice of the hearing at least 10 days prior to the hearing. Service of notice of hearing is to be performed as provided in 104 (2).

(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 or on an individual (age 18 or older) at the person to be served usual place of residence. 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 and mailing a copy of the notice by 1st class mail to the individual to be served; provided however that service by posting shall only be used when the authorized official cannot determine the last known address of the person.

(3) Emergency Action. If an authorized official determines that a 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. Once service is completed, the Tribal Court may issue a temporary restraining order and set a date for a preliminary injunction at the next available court calendar date, provided that the cited individual/entity is given at least 10 days notice of the preliminary hearing. Service is to be completed as provided in 104 (2).

(4) 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 Sections (5), (6) and (7).

(5) 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 cited person or entity (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.

(6) 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 then have incurred as a result of the nuisance. The

Court may order money damages, injunctive relief, costs of 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.

(7) Civil Penalty. The violation of any provision of this Ordinance shall be a civil infraction punishable by a fine not exceeding FIVE HUNDRED DOLLARS (\$500.00) 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) Remedies. The Tribal Court has in addition to any other available remedies under this Ordinance, a further grant of authority to order one or more of the following remedies within its discretion in order to obtain compliance with its orders/judgments. These additional remedies include suspension of selective tribal services identified and limited to DMV exemptions, enrollment card verification, sales tax certification, suspension of eligibility to receive Tribal Per Capita and State of California Special Distributions, or in the alternative, the use of such Tribal Per Capita and State Distributions to satisfy any and all outstanding orders/judgments of the Tribal Court.

(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 while acting in their lawful capacity.

(11) Severability. If any provision of this Ordinance or its application to any person, entity or circumstances 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

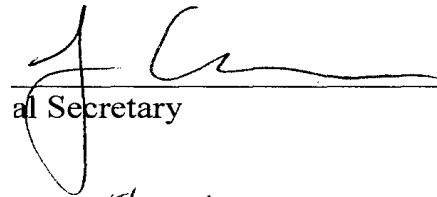
The foregoing Ordinance was passed at a duly called meeting of the Bishop Tribal Council held on the 22^h day of June, 2010 with a quorum present and voting 3 AYES, 0 NAYS, 0 ABSTAINING, and 0 ABSENT, Chairman not voting.

BISHOP TRIBAL COUNCIL:



Tribal Chairman

ATTEST:



Tribal Secretary

6/23/10

Date

Date: 081910_____