

YUROK TRIBE CIVIL OFFENSE ORDINANCE

AUTHORITY

The Yurok Tribal Council has the authority to define civil offenses and sanction violators as part of its regulatory jurisdiction over the conduct of persons and activities on the Reservation. The Yurok Tribal Council has the authority to adopt this ordinance pursuant to Article Section of the Yurok Tribe Constitution

PURPOSE

The intent of this ordinance is not to classify crimes or criminalize conduct, but rather to create a regulatory framework for the enforcement of a code of conduct of all people who enter upon tribal lands and a civil remedy when there are violations of that code. The Yurok Tribal Court (“The Court”) has the authority to review alleged infractions of the below-described civil offenses.

SECTION 1: PROCEDURE

Rules of Procedure: Unless a specific provision of this ordinance provides otherwise, the prosecution of the below-described civil offenses shall be governed by the Yurok Tribal Court Rules of Procedures.

Notice: Upon finding reasonable suspicion that a civil offense has occurred, a Yurok Tribal Police Officer or other officer of the Yurok Tribal Court shall serve the respondent, or have the Respondent served, by any means permitted by law, with a notice that shall include at least the following:

- The name of the Respondent;
- The name of the officer or agent issuing the notice, including the signature of the agent or officer;
- The date the notice was prepared;
- A citation and quotation of the provision of this ordinance which the Tribe alleges the Respondent has violated
- A hearing date, not less than thirty(30) days beyond the date of notice;
- A statement which provides that the Respondent may obtain an attorney at their own expense, and that the Respondent may have the opportunity to call witnesses and cross-examine the Tribe’s witnesses.

The notice described in this subsection shall be served on the Respondent in accordance with Yurok Tribal Court Rules and Procedures.

1.2 Appeals from Tribal Court:

The aggrieved party may appeal a final judgment of the Yurok Tribal Court by filing a notice of appeal with the clerk of the court, within ten (10) days of the Tribal Court's written judgment and posting a cash bond in an amount sufficient to satisfy the judgment if affirmed and any court fees and cost which may be addressed. Appeals from Tribal Court shall be handled in accordance with the Yurok Tribe Rules of Court Appellate Procedures.

1.3 Burden of Proof: The Tribe shall have the Burden of Proof for providing all elements of the below-described offenses by the preponderance of the evidence.

1.4 Definitions:

“Intentionally” or “with intent” when used with respect to a result or to conduct described by a provision of Yurok Tribal law defining a civil offense means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.

“Knowingly” or “with knowledge” when used with respect to a result or to conduct described by a provision of Yurok Tribal law defining a civil offense, means that a person acts with an awareness that the conduct of the person is of a nature

Liquor” means any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

“Negligence” or “negligent” when used with respect to a result or to a circumstance described by a provision of Yurok tribal law defining a civil offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

“Person” means any individual, corporation, commission, partnership or other entity;

“Reasonable Suspicion” means a belief, based upon specific and articulable facts, which taken together with rational inferences from those facts, would lead a reasonable person to suspect a particular person of a specific violation of this ordinance.

“Recklessly” or “reckless” when used with respect to a result or to a circumstance described by a provision of Yurok Tribal law defining a civil offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such

nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

“Reservation” means: all the lands within the exterior boundaries of the Yurok Reservation and any other land outside the boundaries of the reservation that the Tribe may acquire by Federal Law as presently defined or modified in the future.

“Related Entity” any organization owned or controlled by the Tribe, including without limitation, Yurok Indian Housing Authority, Yurok Economic Development Corporation, and any other present or future organizations owned or controlled by the Tribe.

1.5 Proper Parties and Procedures:

All civil offenses shall be enforced and pursued in the Yurok Tribal Court. The enforcement of this ordinance shall be by sworn and commissioned officers of the Yurok Tribal Police Department or qualified persons deputized by the Chief of Police. Offenses shall be prosecuted in the Yurok Tribal Court by the Yurok Tribal Prosecutor.

No other person or entity may enforce, nor pursue in court, a civil offense contained in this ordinance without the express authorization of the Yurok Tribal Council .

SECTION 2: CIVIL OFFENSES

The following shall be civil offenses against the Yurok Tribe.

Violations of Civil Offenses are punishable through the imposition of fines, up to \$2,500, in addition to any other civil penalty or order of the Yurok Tribal Court. It is within the Yurok Tribal Court’s authority to impose any civil penalty, including, but not limited to orders to pay restitution, revocation of licenses, orders of eviction, and permanent ejection from all tribal lands. It is also within the authority of the Yurok Tribal Court to attach property of a person cited with a civil offense until such time as a judgment arising from the offense is satisfied in full. In addition to the offenses listed below, a person commits the offense of “attempt” when the person intentionally engages in conduct which constitutes a substantial step toward commission of a civil offense.

2.1 Giving False Information to Law Enforcement or Security Officer:

A person commits the offense of Giving False Information to a Law Enforcement Officer when the person knowingly uses or gives a false or fictitious name, address, or date of birth to any Law Enforcement Officer for the purpose of issuing or serving the person a citation.

- 2.2 Assault:** A person commits the offense of Assault when the person:
- Intentionally, knowingly or recklessly commits a battery upon another;
 - With criminal negligence, causes physical injury to another by means of a deadly weapon;
 - Communicates a threat, by words or actions, to harm another while possessing the apparent present ability to carry out the threat.

- 2.3 Menacing:**
A person commits the offense of Menacing when the person, by word or conduct, intentionally threatens future harm to the person or property of another.

- 2.4 Recklessly Endangering Another Person:**
A person commits the offense of recklessly endangering another person if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person or to themselves.

- 2.5 Mistreatment:**
A person commits the offense of Mistreatment if,
- In violation of a legal duty to provide care for another person, including an elder, the person withholds necessary and adequate food, physical care or medical attention from such other person; or
 - Having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, including an elder, the person withholds necessary and adequate food, physical care or medical attention from that person.

- 2.6 Child Neglect:**
A person commits the offense of Child Neglect if, having custody or control of a child under eighteen years of age
- If such parent or custodian fails to provide adequate food, clothing, shelter, medical care, education or supervision for the child's health, safety or welfare;
 - If the person leaves the child unattended in or at any place for such period of time as may be likely to endanger the health or welfare of such child.
 - Commits any act or failure to act which would constitute Child Neglect as defined in the Yurok Tribe Children's Code.

2.7 Endangering the Welfare of a Minor: A person commits the offense of Endangering the Welfare of a Minor if the person knowingly:

- Induces, causes or permits an unmarried person under 18 years of age to witness an act of sexual conduct or sadomasochistic abuse, as defined above; or
- Permits a person under 18 years of age to enter or remain in a place where unlawful activity involving controlled substances is maintained or conducted; or
- Distributes, sells, or causes to be sold, tobacco in any form to a person under 18 years of age; or
- Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine, or any controlled substance, as defined above, is burned and the principal design and use of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or smoke from any controlled substance into the human body.

2.8 Theft:

A person commits the offense of Theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person takes, appropriates, obtains or withholds such property from an owner of the property.

2.9 Reckless Burning:

A person commits the offense of Reckless burning if the person recklessly damages property of another by fire or explosion.

2.10 Arson:

A person commits the offense of Arson if, by starting a fire or causing an explosion, the person intentionally damages either:

- Any property not owned by the person; or
- Any building or real property; or
- Any property that is insured against loss by fire regardless of who owns the property

2.11 Mischief:

A person commits the offense of Mischief if, with intent to cause substantial inconvenience to the owner or to another person, and having no right to do so nor reasonable ground to believe that the person has such right, the person tampers or interferes with property of another.

2.12 Unlawfully Applying Graffiti:

A person commits the offense of Unlawfully Applying Graffiti if the person, having no right to do so nor reasonable ground to believe that the person has such right, intentionally damages property of another by applying graffiti to the property.

2.13 Littering:

A person commits the offense of Littering if the person discards any glass, cans, or other trash, rubbish, debris, or litter on the Reservation or within any building owned or operated by the Yurok Tribe or its related entities.

2.14 Disorderly Conduct:

A person commits the offense of Disorderly Conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

- Engages in fighting or in violent, tumultuous or threatening behavior; or
- Makes unreasonable noise; or
- Disturbs any lawful assembly of person without lawful authority; or
- Obstructs vehicular or pedestrian traffic on a public way; or
- Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
- Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime or offense, catastrophe or other emergency; or

- Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

2.15 Harassment:

A person commits the offense of harassment if the person intentionally: Harasses or annoys another person by:

- Subjecting such other person to offensive physical contact; or
- Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;
- Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or
- Subjects another to alarm by conveying a telephonic, computerized or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.
- Subjects another to alarm via electronic or telephonic means, or intentionally causes emotional distress via telephonic or electronic means including but not limited to postings on social networking sites.

2.16 Telephonic Harassment:

A telephone caller commits the offense of Telephonic Harassment if the caller intentionally harasses or annoys another person:

- By causing the telephone of the other person to ring, such caller having no communicative purpose; or
- By causing such other person's telephone to ring and causing such other person to answer it, knowing that the caller has been forbidden from doing so by a person exercising lawful authority over the receiving telephone.

2.17 Pointing Firearms at Another:

Any person over the age of 12 years who purposely points or aims any loaded or empty pistol, gun, revolver or other firearms at or toward any other person within range of the firearm, except in self defense, shall have committed the offense of Pointing Firearm at Another.

2.18 Animal Abuse:

A person commits the offense of Animal Abuse if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly, causes serious physical injury or death to an animal.

2.19 Tobacco Possession by Minors:

A person under 18 years of age shall commit the offense of Tobacco Possession by Minors when such person possesses any Tobacco Products.

2.20 Providing Liquor to Persons under 21 or to Intoxicated Person:

No person shall sell, give or otherwise make available any alcoholic liquor to any person who is visibly intoxicated.

No one shall sell or give any alcoholic liquor to a person under the age of 21 years.

2.21 Possession of Liquor by Person under 21:

No person under the age of 21 years shall have personal possession of alcoholic liquor. For the purposes of this section, "personal possession" of alcoholic liquor includes the acceptance or consumption of a bottle of such liquor, or any portion thereof or a drink of such liquor. However, this section does not prohibit the acceptance or consumption by a person under the age of 21 years of liquor as part of a cultural or religious rite or service as performed by any state, Federal or tribally recognized religious group or affiliation.

2.22 Trespass:

A person commits the offense of trespass if the person enters or remains unlawfully in or upon premises of another. For the purposes of this subsection, "enter or remain unlawfully" means:

- To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public or when the entrant is not otherwise licensed or privileged to do so; or
- To fail to leave premises that are open to the public after being lawfully directed to do so by law enforcement, security or management.

- To fail to leave any residence when requested to do so by the owner or lessee of the premises.
- To enter tribally owned premises in violation of exclusion order issued by Tribal Court or Tribal Council.
- For the purposes of this subpart, “premises” includes any building and/or any real property, whether privately or publicly owned.

2.23 Possession, Delivery or Manufacturing of Controlled Substances:

For the purposes of this subsection, a “controlled substance” includes a drug or its immediate precursor classified in schedules I through V under the Federal Controlled Substances Act, 21 U.S.C. 811 to 812. Any person who possesses, Delivers or manufactures Controlled Substances, unless such substances was obtained pursuant to a prescription form a licensed professional, authorized under state, federal or tribal law to issue such prescription.

2.24 Unauthorized Sale of Distribution of Prescription Drugs:

A person shall commit the offense of unauthorized sale of prescription drugs if the person is not authorized and licensed to sell or distribute prescription drugs and the person sells or distributes prescription drugs.

2.25 Nuisance:

A person shall commit the offense of Nuisance if he or she creates or fails to remove any condition wholly or partially on his or her own property which substantially interferes with the right of others to enjoy their property.

2.26 Public Intoxication:

A person commits the crime of public intoxication if he appears in a public place under the influence of alcohol, narcotics or other drug to the degree that he endangers himself or another person or property, or by boisterous and offensive conduct annoys another person in his vicinity. A person may commit the offense of public intoxication by being under the influence of alcohol or drugs. This may include prescription drugs, over-the-counter medications or even aerosol sprays. It is a defense to prosecution for public intoxication that the alcohol or drugs were administered for therapeutic purposes and as part of the person's professional medical treatment by a licensed physician.

MISCELLANEOUS PROVISIONS

Severability

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

Interpretation and findings

The Yurok Tribal Court may interpret any ambiguities contained in this ordinance.

Conflicting provisions

Whenever any conflict occurs between the provisions of this ordinance and the provisions of any other ordinance of the Tribe, the stricter of such provisions shall apply.

Amendment

This Ordinance may be amended by Tribal Council resolution approved by majority vote of the Yurok Tribal Council. Any such resolution adding, deleting, or modifying a civil offense shall be effective immediately and shall be immediately provided to the Yurok Tribal Police.

C*E*R*T*I*F*I*C*A*T*I*O*N

THE FOREGOING ORDINANCE, ENTITLED THE YUROK TRIBE CIVIL OFFENSE ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUROK TRIBAL COUNCIL ON MARCH 19th, 2010, AT WHICH A QUORUM WAS PRESENT AND THAT THIS ORDINANCE WAS APPROVED BY A VOTE OF 7 FOR, 0 OPPOSED, WITH 0 ABSTENTIONS

DATED THIS 19th DAY OF MARCH, 2010.



**Thomas P. O'Rourke, Chairman
Yurok Tribal Council**

Attest:



**Dale Ann Sherman, Secretary
Yurok Tribal Council**