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# YUROK TRIBAL CODE

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## Protection Orders Ordinance

### SECTION 1. PURPOSE AND DEFINITIONS

#### 1.1 PURPOSE

The purpose of this ordinance is promote the health and welfare of the Yurok Tribe, to recognize that domestic abuse and harassment are serious crimes against society, the Yurok People, and the family, and to provide the victims of domestic violence and harassment the maximum protection from further abuse which the law can provide. The strength of the Yurok Tribe is founded on healthy families, and families damaged by domestic abuse must be healed by the immediate intervention of law enforcement, prosecution, education, counseling, and other appropriate services. Violent behavior will not be excused or tolerated within the jurisdiction of the Yurok Tribe. Intoxication of the perpetrator is irrelevant. The laws preventing domestic abuse and harassment shall be enforced regardless of marital status, cohabitation or the existence of a current relationship between the parties.

With the enactment of this ordinance is the recognition that the harmony of human beings with each other has been disturbed by the introduction of foreign ways including alcohol, more recently drugs, and practices in relationships which are not consistent with our traditional manners. This has brought great sadness to the people and created much disharmony. The purpose of this ordinance is to offer protection for those harmed or who may stand in harm's way and to offer a chance to those who would do harm to choose another way and to receive support in their efforts to return to harmony through the acceptance of appropriate consequences and treatment.

#### 1.2 DEFINITIONS

As used in this ordinance, these terms have the following meanings:

- (1) *Domestic Violence* means the commission of one or more of the following acts upon an aggrieved party or upon a member of the aggrieved party's family or household by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense or actions taken in defense of a minor child or persons deemed unable to defend themselves by virtue of age or incapacitation:

- (A) Attempting to cause bodily injury, or intentionally causing bodily injury, or attempting to cause mental anguish, or intentionally causing mental anguish; or
  - (B) Placing the aggrieved party or a member of the aggrieved party's family or household in reasonable fear of imminent serious bodily injury, or mental anguish; or
  - (C) Forcing the aggrieved party or a member of the aggrieved party's family or household to engage in sexual activity by force, threat of force, or duress.
- (2) *Family or Household Member* means spouses, former spouses, common-law spouses, domestic partners, parents, grandparents, children, siblings, half siblings, cousins, aunts, uncles, and adult persons or emancipated minors presently residing together or who have a child in common regardless of whether they have been married at any time.
- (3) *Personal Relationship* means a relationship wherein the parties involved:
- (A) Are current or former spouses;
  - (B) Are current or former family or household members;
  - (C) Are in or have been in a dating or romantic relationship;
  - (D) Have a child in common; or
  - (E) Are related as parents and children, including persons acting *in loco parentis* to a minor child, or as grandparents and grandchildren.
- (4) *Protected person* means any person who is protected by a protection order, whether that person personally filed or joined in the request for protection, or is a minor child or adult, claimed to be in need of protection, who is in the requesting party's care and consents to be represented or is found to be lacking in the immediate capacity to consent based upon the declaration of the requesting party.
- (5) *Harassment* is unlawful violence, a credible threat of violence, or a knowing and willful pattern of conduct directed at a specific person

that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress. Harassment does not include acts of self-defense or actions taken in defense of a minor child or persons deemed unable to defend themselves by virtue of age or incapacitation.

- (6) *Yurok Tribal Court* means the Yurok Tribal Court or any successor Court established by the Yurok Tribal Council.
- (7) *Ex Parte Protection Order* means a temporary or emergency order restraining any person from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person that is issued by a tribal, state, or federal court with jurisdiction over the person restrained and subject matter jurisdiction. The order shall also provide for an opportunity for a restrained person to be heard before the issuance of a permanent order of protection.
- (8) *Permanent Order of Protection* means an order restraining any person for a specified period of time from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person issued by a tribal, state, or federal court with jurisdiction over the person restrained and subject matter jurisdiction. The order may be the result of a civil protection order proceeding or the result of an order arising from a criminal prosecution against a person. Civil orders for protection granted by the Yurok Tribal Court may be in effect for a period of time not to exceed one year, and upon request may be amended, modified, or renewed for up to three years.
- (9) *Mutual Protection Order* means an order issued by a tribal, state, or federal court which restrains both parties to a proceeding from harassing, annoying, stalking, contacting or coming within a certain proximity to another person. In order to be enforced by the Yurok Tribal Court, a mutual protection order must be the result of both parties to a proceeding filing separate protection order petitions and the issuing Court finding that each of the persons to a mutual protection order have committed an act of domestic violence or harassment under the laws of the issuing jurisdiction.
- (10) *Attorney/Advocate* means a person practicing as an advocate or attorney who is a member in good standing of the Yurok Bar Association and includes any other person allowed to represent a party at the discretion of a hearing judge. Either party may appear on his or her own behalf.

- (11) *Issuing Court* – a tribal, state, or federal court that issues an ex parte or permanent order of protection against a person.
- (12) *Enforcing Court* – a tribal, state, or federal court that recognizes and enforces an ex parte or permanent order of protection against a person issued by another tribal, state, or federal court.
- (13) *Full Faith and Credit* requires enforcing an ex parte or permanent order of protection from another court as if it were an order of the Yurok Tribal Court. In enforcing said order of protection, the court and its law enforcement agencies shall apply all laws and ordinances, including mandatory arrest for violations of protection orders, that the court has in existence at the time enforcement of the foreign protection order is sought. Registration of the protection order is not a prerequisite to enforcement under this paragraph.
- (14) *Indian* - Any person who is a member of a tribe recognized by federal or state government. To the extent allowed by state and federal law, persons may be considered to be Indian under this ordinance even if not formally enrolled in a tribe, so long as they are recognized as Indian by a tribe.
- (15) *Registration* is the act of either (1) filing a protection order issued by another court with the Yurok Tribal Court or with the Yurok Tribal Police, or (2) filing a protection order issued by the Yurok Tribal Court with another tribal, state, or federal court or law enforcement agency.

## **SECTION 2. JURISDICTION**

### **2.1 REQUEST FOR PROTECTION ORDER**

The Yurok Tribal Court has jurisdiction over any request for an order for protection under this ordinance when the petitioner or respondent resides or is found within the boundaries of the Yurok Reservation, the act of harassment or domestic violence occurred within the boundaries of the Yurok Reservation, or the Yurok Tribal Court is being asked to recognize and enforce a valid order of another court of competent jurisdiction.

### **2.2 CRIMES OF DOMESTIC VIOLENCE AND HARASSMENT**

The Yurok Tribal Court has jurisdiction over crimes of domestic violence and harassment committed within the boundaries of the Yurok Reservation by any Indian, regardless of whether the victim is Indian or non-Indian.

## 2.3 VIOLATION OF ORDER FOR PROTECTION

(1) **Criminal.** The Yurok Tribal Court has jurisdiction over crimes involving the violation of an order for protection by any Indian, regardless of whether the protected person is Indian or non-Indian.

(2) **Civil.** The Yurok Tribal Court has jurisdiction over civil contempt actions involving the violation of an order for protection, regardless of whether the person allegedly in violation of the order or the person protected by the order is Indian or not.

## 2.4 JURISDICTIONAL CHART

<u>Type of Action</u>	<u>Tribal Jurisdiction</u>
(1) Request for Protection Order	Yes
(2) Crime of Domestic Violence or harassment	
(A) Committed by Indian	Yes
(B) Committed by non-Indian	No
(3) Violation of Order for Protection	
(A) Criminal Contempt	
(1) Committed by Indian	Yes
(2) Committed by non-Indian	No
(B) Civil Contempt	
(1) Committed by Indian	Yes
(2) Committed by non-Indian	Yes

## 2.5 CONSTRUCTION

The Court shall construe this section liberally to exercise maximum jurisdiction consistent with applicable tribal, state, and federal law. Any restrictions in this ordinance on the exercise of criminal jurisdiction over non-Indian perpetrators shall become null and void at such time as state and federal law permits.

## **SECTION 3. CIVIL ORDERS FOR PROTECTION**

### **3.1 FILING OF CIVIL ACTION**

Any person residing within the external boundaries of the Yurok Reservation or seeking protection from conduct occurring on the Yurok Reservation may pursue relief under this ordinance by filing a request for an order to stop harassment or an order to prevent domestic violence, alleging acts of harassment or domestic violence against himself or herself or a member of his or her family or household. If protection is sought for a family or household member over 18 years of age having capacity, that person must sign the petition requesting protection or a declaration must be provided indicating why any such person is not signing. Relief may be sought under this ordinance without the assistance of legal counsel.

### **3.2 PROCEDURE FOR OBTAINING AN ORDER OF PROTECTION**

**(1) Who May Petition.** A petition to obtain an order of protection under this section may be filed with the Clerk of the Yurok Tribal Court by:

- (A) Any person claiming to be the victim of domestic violence or harassment; or
- (B) Any family or household member of a minor child or adult who is claimed to be in need of protection, is in the requesting party's care, and consents to be represented or is found to be lacking in the immediate capacity to consent based upon the declaration of the requesting party.

**(2) Forms.** A petition for an order of protection should be made on the forms adopted for that purpose by the Yurok Tribal Court and provided on request by the Clerk of the Court:

- (A) A request for an order to stop harassment should be made on Form YCH-100; and
- (B) A request for an order to prevent domestic violence should be made on Form YDV-100.

**(3) Protecting Others.** If the petitioner requests protection for other persons over 18 years of age who have capacity, each such person must sign the petition confirming that they are joining in the request or a declaration must be provided stating why such persons are not signing.

**(4) No Fees.** Fees for filing and service of process shall not be charged for any proceeding seeking only the relief provided in this ordinance.

**(5) Service.** Upon the filing of a petition under this section, the Clerk of the Court shall as soon as possible have served upon the respondent a copy of the petition, any temporary protection order, and notice of hearing of the petition.

**(6) Hearing.** A hearing to determine whether a permanent order for protection should be issued shall be held within seven calendar days from the date of issuance of the temporary order and notice of hearing.

**(7) Continuance**

(A) At the time of the permanent order for protection hearing, a continuance may be granted when:

(1) respondent requests a continuance and shows that there is good cause for the request; or

(2) respondent is represented by an attorney and the aggrieved party is not, and the aggrieved party requests a continuance in order to retain an attorney.

(B) During the time of any continuance, any temporary order will remain in effect unless there is good cause for modification.

**3.3 TEMPORARY ORDERS FOR PROTECTION**

Prior to the hearing on a request for a permanent order for protection, if it clearly appears to the Court from specific facts shown that there is a danger of acts of domestic violence or harassment to the aggrieved party or a minor child or protected adult, the Court may enter such temporary orders as it deems necessary to protect against such acts; provided, however, that a temporary order for custody prior to service of process and notice shall not be entered unless the Court finds that the aggrieved party is exposed to a risk of bodily injury or sexual abuse, or that a child is at risk of suffering physical or emotional harm if such order is not granted.

(1) If an aggrieved party requests ex parte relief, the Clerk of the Court shall schedule an ex parte hearing with the Court at the earliest possible time. If the Court is not in session, the clerk shall arrange for a judge to review the request within 24 hours.

(2) The Court may issue an ex parte emergency protective order where a law enforcement officer asserts reasonable grounds to believe that a person is in immediate danger, based on an allegation of a recent incident or threat of violence or abuse.

(3) Upon the issuance of an ex parte order under this section, a hearing on whether to grant a permanent order for protection shall be held within seven calendar days from the date of issuance of the temporary order.

(4) Upon setting the date for the permanent order for protection hearing, the clerk shall issue a notice of hearing within the time periods provided in this section, and shall effect service of the summons, petition, notice, order and other papers through the Yurok Tribal Police on the respondent.

### **3.4 PERMANENT ORDER FOR PROTECTION HEARING**

(1) Before any permanent order for protection may be issued, the Court shall hold a hearing for the purpose of determining whether such an order is appropriate.

(2) Prior to or at such hearing, the respondent may file a response that explains, excuses, justifies, or denies the alleged harassment or domestic violence.

(3) At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry.

(4) If the judge finds by clear and convincing evidence that unlawful harassment or domestic violence occurred, the Court will issue an order prohibiting the conduct and describing other appropriate relief.

### **3.5 CONTENTS OF PROTECTION ORDER**

(1) Any protection order, temporary or permanent, issued by the Court shall include the following information:

(A) The name, race, tribal status, date of birth, and other personal descriptive information of the respondent.

(B) The names and dates of birth of the protected persons.

(C) The date of issuance of the order.

(D) The duration or expiration date of the order.

(E) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions.



(F) The name and address of the Yurok Tribal Court.

(G) Whether or not the order was served upon the respondent and, if applicable, whether respondent was present in Court when the order was issued.

(H) The terms and conditions of any restrictions on the ownership or possession of firearms.

(2) All available information shall be included; however, the inability to provide all categories of information shall not render the order unenforceable.

#### **SECTION 4. RELIEF AVAILABLE THROUGH PROTECTION ORDERS**

##### **4.1 RELIEF AVAILABLE EX PARTE**

The Court may grant the following relief either without notice and a hearing in a temporary order for protection or a modification issued ex parte, or following notice and a hearing in a permanent order for protection, modification of a permanent order, or approval of a consent agreement:

(1) Order a party responsible for harassment or domestic violence to refrain from doing any or all of the following:

(A) Threatening to commit or committing acts of violence against the aggrieved party and any designated family or household member;

(B) Harassing, contacting, or otherwise communicating with the protected party, directly or indirectly through friends, relatives, or co-workers;

(C) Coming within a certain distance of the residence, school, place of employment, vehicle, or other specified place frequented by the petitioner and any designated family or household member; or

(D) Otherwise interfering with any protected party.

(2) Remove and exclude the respondent from the residence of the aggrieved party, regardless of ownership of the residence or lessee of record;

- (3) Award temporary custody of minor children and establish temporary visitation rights in accordance with applicable law;
- (4) Provide for possession of personal property of the parties, including granting an aggrieved party use of a vehicle and other essential personal effects, regardless of which party holds title to such property;
- (5) Seize and prohibit the respondent from using, possessing or purchasing a firearm or other weapon for a time specified by the Court;
- (6) Order a party to maintain, and refrain from removing funds beyond a certain limit from, the parties' bank account and other joint assets; and
- (7) Include any additional prohibitions or requirements the Court deems necessary to protect an aggrieved party and any designated family or household member.

#### **4.2 RELIEF AVAILABLE AFTER NOTICE AND HEARING**

In addition to relief available ex parte, the Court may grant the following relief in a permanent order for protection or a modification of an order after notice and a hearing, whether or not the respondent appears:

- (1) Specify arrangements for visitation of any minor child by respondent and require supervision of that visitation by an independent third party or deny visitation if necessary to protect the safety of the petitioner or child;
- (2) Order the respondent to make payments for the support of the petitioner or any minor child if the respondent is found to have a duty to provide such support;
- (3) Require a party responsible for domestic violence to provide a spouse and his or her children suitable alternate housing;
- (4) Order the respondent to reimburse the petitioner or other person for any expenses associated with the harassment or domestic violence, including but not limited to medical expenses, counseling, shelter, loss of earnings or support, and repair or replacement of damaged property;
- (5) Award costs and legal fees incurred in bringing the action; and

(6) The provisions of Section 8. Evaluation & Treatment below are incorporated herein and said benefits and protections available in Section 8 shall be equally available to parties in orders after hearing situations.

#### **4.3 DURATION OF ORDER**

Any permanent order for protection or consent order issued pursuant to this ordinance shall be enforced until further order of the Court for a fixed period of time not to exceed one year, and may upon the request of a protected party be subject to amendment for an extension or renewal of up to three years.

#### **4.4 MUTUAL ORDERS**

Protective orders entered or consent orders approved shall not be mutual in nature except where both parties file a claim and the Court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

### **SECTION 5. ENFORCEMENT**

#### **5.1 TRIBAL REGISTRY FOR ORDERS FOR PROTECTION**

(1) A copy of any order entered and filed under this ordinance shall be issued to each party.

(2) To ensure the proper and timely enforcement of all Yurok Tribal Court orders for protection, and any foreign orders falling within its purview and jurisdiction, the Court or its designee shall provide for a registry of all orders for protection issued by or registered with the Court. In addition, a copy of all orders for protection shall be issued to and retained by the Yurok Tribal Police.

(3) For the purpose of enhancing full faith and credit enforcement of all orders for protection, the Court shall ensure that Yurok tribal orders for protection are submitted to other applicable registries, whether tribal, local, state, or federal.

(4) Copies of orders for protection shall be filed in state court and issued to the Humboldt and Del Norte County Sheriff's Departments, which under authorization of the cross deputization agreements with the Yurok Tribe shall have the authority to enforce all such orders.

(5) If the Court issues a modification, extension, or termination of a protective order, all law enforcement agencies which were provided with the original order shall be notified of the terms of the modification, extension, or termination.

## **5.2 ARREST**

A law enforcement officer may arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has committed a crime of domestic violence, committed an crime of harassment involving assault, battery, or stalking, or violated a protective order and the victim, or someone acting on the victim's behalf, presents the law enforcement officer with a copy of the order or the officer determines that such an order exists, and can ascertain the contents thereof, through phone, radio or other communication with appropriate authorities.

(1) Nothing in this section shall prohibit a law enforcement officer from securing a warrant for the arrest of a person who is subject to warrantless arrest.

(2) If the law enforcement officer at the scene of an incident of harassment or domestic violence determines that a protective order has been issued but not served, the officer shall immediately notify the perpetrator of the terms of the order and shall at that time also enforce the order.

(3) Any person arrested and held shall be brought before the Court at the earliest time possible for a judicial determination of probable cause, but no later than 48 hours after the arrest. The person arrested may be released on bail as determined by the Court pursuant to section 5.3 of this ordinance.

## **5.3 RELEASE**

(1) In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic violence, harassment, or a violation of a protection order, the Court shall review the facts of the arrest and detention of the person and determine whether the person:

(A) is a threat to the alleged victim or other protected person;

(B) is a threat to public safety; and

(C) is reasonably likely to appear in court.

(2) Before releasing a person arrested under this ordinance, the Court shall make findings on the record concerning the determination made in accordance with section 5.3(1) and may impose conditions of release on bail on the person to protect the alleged victim or other protected person and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

- (A) An order enjoining the person from threatening to commit or committing acts of violence against the alleged victim or other protected person;
- (B) An order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim or other protected person, whether directly or indirectly;
- (C) An order directing the person to vacate or stay away from the home of the alleged victim or other protected person and to stay away from any other location where the protected person is likely to be;
- (D) An order prohibiting the person from using or possessing a firearm or other weapon as specified by the Court;
- (E) An order prohibiting the person from possession or consumption of alcohol or controlled substances; and
- (F) Any other order required to protect the safety of the alleged victim or other protected person and to assure the appearance of the person in court.

(3) The Court shall provide a copy of the conditions of release to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

(4) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the Court to review the conditions, as allowed pursuant to section 3.3(3) of this ordinance, which governs hearings following the issuance of ex parte orders.

#### **5.4 FOREIGN ORDERS**

**(1) Enforcement of Foreign Protection Orders.** Whenever any law enforcement officer of the Yurok Tribe or the Yurok Tribal Court is presented with an order, either ex parte or permanent, or verifies the existence of such an order with the court or law enforcement of the issuing jurisdiction, which restrains any person from harassing, annoying, stalking, contacting or coming within a certain proximity to another person that was issued by another tribal, state, or federal court, the provisions of such order shall be enforced as if it were issued by the Yurok Tribal Court.

**(2) Role of Law Enforcement.** If a law enforcement officer of the Yurok Tribe is presented with such an order, verifies the existence of such an order with the court or law enforcement of the issuing jurisdiction, or is told by an allegedly protected person of the existence of such an order and reasonably believes a violation may occur, the officer

shall enforce such order as if it had been entered by the Yurok Tribal Court. This may include arresting a person without the necessity of a warrant, if the officer has probable cause to believe the person has violated the protection order, and taking all necessary steps to assure the safety of the protected person. If an arrest occurs based on an oral representation of the existence of a protection order, confirmation must occur as soon as possible; if confirmation of the order cannot be made within 48 hours the arrested person must be released.

**(3) Immunity for Good Faith Enforcement.** An officer or any other law enforcement official of the Yurok Tribe who acts in good faith in enforcing a foreign protection order and its terms shall be immune from suit for wrongful arrest or any other civil or criminal action. This immunity shall extend to a tribal officer who effects the arrest of a non-Indian for violation of a protection order.

**(4) Role of Tribal Court.** The Yurok Tribal Court shall enforce a protection order and all provisions of that protection order, including child custody and property awards, if all the following are satisfied:

- (A) The respondent received notice of the order in compliance with the requirements of the issuing jurisdiction;
- (B) The order remains in effect in the issuing jurisdiction;
- (C) The issuing court had jurisdiction over the parties and subject matter;
- (D) The respondent was afforded reasonable notice and the opportunity to be heard prior to the issuance of a permanent protection order or in the case of an ex parte order it appears from the face of the order that a hearing will be conducted within reasonable time to allow the respondent to raise any defenses he or she may have to the issuance of a permanent protection order.

**(5) Registration of Foreign Protection Order with the Tribal Court.** Any person who has received a protection order from another tribal, state, or federal court may file it with the Clerk of the Yurok Tribal Court and request that the Court grant it full faith and credit. Immediately upon the filing of that protection order with the Court, a Tribal Judge shall review such filing and if it appears from the face of the order it meets the requirements of section 5.4(4) shall enter an order recognizing the protection order. Said order shall immediately be forwarded to tribal law enforcement. A person shall be not charged a fee for the filing of a foreign protection order. A person protected by a protection order issued by another court need not file that protection order with the Yurok Tribal Court in order to receive law enforcement protection under this ordinance.

**(6) Violation of Foreign Protection Order**

(A) Persons who violate a foreign protection order issued by any tribal, state or federal court within the jurisdiction of the Yurok Tribe are subject to the same civil and criminal penalties otherwise imposed for violations of protection orders under this ordinance.

(B) It is not a defense to this section that a protected person had not registered the protection order with the Yurok Tribal Court prior to the violation.

## **SECTION 6. CRIMINAL PENALTIES AND PROCEDURES**

The commission of an act of domestic violence; an act of harassment involving assault, battery, or stalking; or the willful and knowing violation of certain orders for protection by a member of the Yurok or another Indian tribe on the Yurok Reservation may be charged by the Tribal Attorney as a misdemeanor.

### **6.1 DOMESTIC VIOLENCE**

Committing an act of domestic violence as defined by this ordinance is a crime, regardless of the existence of a protection order. The commission of such an act triggers the application of this ordinance even if a separate but related offense is charged in a criminal complaint.

### **6.2 HARASSMENT INVOLVING ASSAULT, BATTERY, OR STALKING**

Committing an act of harassment involving assault, battery, or stalking is a crime, regardless of the existence of a protection order or any current or past relationship between the parties. The commission of such an act triggers the application of this ordinance even if a separate but related offense is charged in a criminal complaint. The purpose of this section is to afford protection of the right of persons to safety, happiness, and privacy.

### **6.3 VIOLATION OF CERTAIN ORDERS FOR PROTECTION**

(1) The willful and knowing violation of one or more of the following orders issued in accordance with this ordinance is a crime:

(A) An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other protected person;

(B) An order prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating verbally or in writing with a person directly or indirectly through family members, friends, or co-workers;

(C) An order removing and excluding the respondent from the residence of the petitioner;

(D) An order requiring the respondent to stay away from the residence, school, place of employment, or other specified place frequented regularly by the petitioner and any named family or household member;

(E) An order granting temporary custody of a child, denying visitation, or outlining specific visitation conditions and restrictions;

(F) An order prohibiting the respondent from using or possessing a firearm or other weapon as specified by the court; and

(G) An order requiring the respondent to attend a treatment program specified by the court.

(2) It shall not be a defense to a charge of violation of an order for protection under this section that the protected party or member of that person's family or household consented to the violation by encouraging contact or a violation of the order.

#### **6.4 PROCEDURES**

(1) The Tribal Attorney may prosecute crimes only upon notice to the person charged. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the crime charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the person charged or by an order to show cause or an order of arrest.

(2) Any person subject to a criminal proceeding under this ordinance shall be entitled to the following:

(A) a speedy and public trial;

(B) the right to be informed of the nature of the accusation;

(C) the ability to confront witnesses against him or her;

(D) access to compulsory process for obtaining witnesses in his or her favor;

(E) assistance of counsel for his or her defense at his or her own expense;

(F) equal protection of the laws and due process;



(G) a trial by jury of at least six persons, upon request and in the event the offense is punishable by imprisonment.

## **6.5 CRIMINAL PENALTIES**

When a person commits and is found guilty beyond a reasonable doubt of a crime under this ordinance, the Court shall impose criminal penalties as follows upon the offender:

### **(1) First Offense:**

(A) Any person convicted of a first criminal offense under this ordinance may be sentenced to imprisonment for a term not to exceed 60 days, may be ordered to make restitution when appropriate, may be ordered to perform community service of up to 120 hours, may be banished from the Yurok Reservation for a designated period of time, and shall be fined an amount not less than \$100.00 or more than \$5,000.00.

(B) Imposition of sentence may be suspended dependent upon successful completion of a treatment program and up to one year of supervised probation.

### **(2) Second Offense:**

(A) Any person convicted of a second criminal offense under this ordinance may be sentenced to imprisonment for a term not to exceed 120 days, may be ordered to make restitution when appropriate, may be ordered to perform community service of up to 180 hours, may be banished from the Yurok Reservation for a designated period of time, and shall be fined an amount not less than \$250.00 or more than \$5,000.00.

(B) Imposition of sentence may be suspended dependent upon successful completion of a treatment program and up to two years of supervised probation.

### **(3) Third or Subsequent Offense:**

(A) Any person convicted of a third criminal offense under this ordinance may be sentenced to imprisonment for a term not to exceed one year, may be ordered to make restitution when appropriate, may be ordered to perform community service of up to 240 hours, may be banished from the Yurok Reservation for a designated period of time, and shall be fined an amount not less than \$500.00 or more than \$5,000.00.

(B) Imposition of sentence may be suspended dependent upon successful completion of a treatment program and up to three years of supervised probation.

**(4) Supervision During Probation.** Any person placed on probation under this section shall be supervised in a manner specified by the Court, and the supervising agency may be given administrative and rehabilitative latitude to set conditions consistent with assisting the offender to attain a non-violent, productive, and substance-free life path.

**(5) Sentencing Enhancement.** The Court may enhance the sentencing level for criminal offenses under this ordinance in consideration of aggravating factors including, but not limited to, use of weapons, level of injury, criminal history, and history of violence. In no event shall the Court impose for conviction of any one offense imprisonment for a term of greater than one year.

**(6) Habeas Corpus.** The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention or banishment by order of the Yurok Tribal Court.

## **SECTION 7. CIVIL CONTEMPT**

Any protected person or the Tribal Attorney may pursue a civil action for contempt against any person, regardless of tribal membership, who willfully and knowingly violates any protection order entered pursuant to this ordinance.

### **7.1 HEARING**

Upon the filing of an action for contempt under this subsection, the clerk shall schedule and issue notice of a show cause hearing with the Court at the earliest possible date.

### **7.2 SERVICE**

Service of the motion, notice, and other papers shall be effected through the Yurok Tribal Police or other appropriate law enforcement agency on the respondent.

### **7.3 PENALTIES**

Upon the answer and evidence taken, the Court shall determine whether the person proceeded against is guilty of the contempt charged, and if the person is found to have violated the protection order, any or all of the following may be imposed for each count proved:

- (1) A fine not exceeding \$5,000.00, payable to the Court;

- (2) Community service of up to 120 hours;
- (3) Specified evaluation and treatment, upon a finding that it is appropriate;
- (4) In the case of persons who are not members of the Yurok Tribe, exclusion from the Yurok Reservation for any period of time designated by the Court.

#### **7.4 ATTORNEY'S FEES AND COSTS**

A person who is found guilty of contempt for violating a court order may be ordered to pay to the party initiating the contempt proceeding the reasonable attorney's fees and costs incurred by this party in connection with the proceeding. If the action is initiated by the Tribal Attorney, any such fees collected shall be deposited into the Yurok Tribe Domestic Violence Relief Fund established by this ordinance.

### **SECTION 8. EVALUATION & TREATMENT OF OFFENDERS**

#### **8.1 MANDATORY EVALUATION**

Any person who is found to have violated a protection order or committed a criminal act of domestic violence or harassment under this ordinance shall undergo an evaluation approved by the Court to determine whether the party should be required to obtain batterers, substance abuse, and/or family counseling and treatment. The Court may seek the recommendation of Social Services in identifying appropriate evaluators. The evaluation shall recommend the type of counseling or treatment, if any, the evaluator considers appropriate, and shall recommend any suitable counseling and/or treatment programs.

#### **8.2 RECOMMENDATION**

If the evaluation recommends counseling or other treatment, the Court shall order the person to complete the counseling or other treatment in addition to any other sentence which may be imposed. If the Court determines with or without the evaluation that counseling or treatment would be inappropriate or undesirable, the Court shall enter findings articulating the reasons for such determination.

#### **8.3 SUPERVISION**

While enrolled in a treatment program, the person enrolled and/or the family or involved parties may be supervised in the manner ordered by the Court.

#### **8.4 ASSESSMENT UPON COMPLETION**

Upon the completion of the mandated counseling or treatment, an assessment of the person enrolled in the counseling or treatment shall be done, and a copy of the findings and recommendations for future treatment/supervision or other relevant recommendations shall be submitted to the Court by the treating facility or program.

#### **8.5 VOLUNTARILY SEEKING TREATMENT**

Any party may voluntarily seek evaluation and treatment. The Court may take into consideration a party's voluntary participation in evaluation and treatment in deciding what relief is appropriate under this ordinance.

#### **8.6 COSTS**

The Court may order the person found to have violated a protection order or any person found responsible for the issuance of a protective order to pay any cost for counseling or treatment that is ordered.

### **SECTION 9. EMERGENCY ASSISTANCE**

#### **9.1 YUROK TRIBAL POLICE**

A person who alleges that he or she or another family or household member has been the victim of domestic violence or criminal harassment may request the assistance of the Yurok Tribal Police Department, and the Police Department shall respond to the request for assistance as a high priority matter.

(1) The police officer responding to the request for assistance shall take whatever steps are reasonably necessary to protect the victim and other household or family members from harm, including without limitation:

(A) Advise the victim and other household or family members of sources of shelter, medical care, counseling and other services;

(B) Transport the victim and other household or family members to appropriate facilities such as hospitals, the Court, or public or private facilities for emergency shelter;

(C) Upon request, accompany the victim and other household or family members to their residence(s), so that they may remove food, clothing, medication and such other personal property as is reasonably necessary to enable them to remain elsewhere pending further proceedings;

(D) Confiscate any weapon involved in the alleged domestic violence;

(E) Give the victim and other household or family members adequate notice of rights, remedies and services available;

(F) Arrest the alleged perpetrator as may be required by any applicable law;

(G) Enforce all valid protective orders without further order of the Court;

(H) Give full faith and credit to valid protection orders entered by the courts of any state or Indian Tribe and enforce those orders without further order of the court; and

(I) Seek an emergency protective order.

## **9.2 LIABILITY**

No officer may be held criminally or civilly liable on account of reasonable measures taken in providing assistance under authority of section 9.1.

## **SECTION 10. NON-INDIANS**

### **10.1 PURPOSE OF REGULATION OF NON-INDIANS**

The regulation of non-Indians authorized by this ordinance is necessary to prevent violence on the Yurok Reservation and thereby promote self-government and internal relations, political integrity, security, and the health and welfare of the Yurok Tribe.

### **10.2 SCOPE OF REGULATION**

All individuals found to be involved as the perpetrator of harassment or domestic violence against Tribal members or others within the boundaries of the Yurok Reservation are subject to the arrest provisions of sections 5.2 and 9.1, may be restrained by an order for protection issued by the Yurok Tribal Court, may be held in civil contempt for violation of any such protection order, and may be excluded from the Yurok Reservation.

### **10.3 RELEASE**

If it is determined by an official means that a non-Indian person has been arrested, the non-Indian person may be released to any other proper jurisdiction.

#### **10.4 CONSENT**

A non-Indian person may accept the jurisdiction of the Yurok Tribal Court to defend any charge of domestic violence, harassment, or violation of a protection order.

#### **10.5 EXCLUSION**

Upon violating a protection order or committing an act of domestic violence or harassment, proceedings for removal and exclusion of a non-Indian perpetrator from the Yurok Reservation may be initiated by the Tribe with a finding that exclusion is a proper remedy to ensure the safety of the victim(s).

#### **SECTION 11. REMEDIES NOT EXCLUSIVE**

The remedies provided by this ordinance are not exclusive but are additional to remedies provided elsewhere in any code adopted by the Yurok Tribal Council.

#### **SECTION 12. DOMESTIC VIOLENCE RELIEF FUND**

Domestic violence prevention funding is established by this ordinance. All monies received from fines pursuant to this ordinance shall be deposited into the Yurok Tribe Domestic Violence Relief Fund. The funds shall be used to make grants to any tribally recognized center providing services for victims of domestic violence as appropriated by the Yurok Tribal Council. To be eligible to receive funds under this section, a domestic violence center must meet the following requirements:

- (1) It shall offer all of the following services: a hotline, transportation services, community education programs, daytime services, and call forwarding during the night.
- (2) It shall be a nonprofit corporation or a local governmental entity.

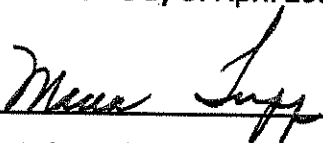
#### **SECTION 13. SEVERABILITY**

If a court with the authority to do so finds any clause or section of this ordinance to be invalid, such clause or section shall be severed, and the remainder of this ordinance shall remain in full force and effect.

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

This is to certify that this Protection Orders Ordinance was adopted by the Yurok Tribal Council at a regularly scheduled meeting on April 9<sup>th</sup>, 2009, at which a quorum was present and this ordinance was adopted with a vote of 6 Yes, 0 No, 0 Abstentions. This ordinance has not been rescinded or amended in any way.

Dated this 9<sup>th</sup> Day of April 2009.

  
\_\_\_\_\_

Maria Tripp, Chairperson

Yurok Tribal Council

  
Attest: \_\_\_\_\_

Cynthia McKernan, Executive Assistant