



SUSANVILLE INDIAN RANCHERIA

SUSANVILLE INDIAN RANCHERIA EXCLUSION ORDINANCE

ORDINANCE NO. 2019 - 001

1. GENERAL PROVISIONS; FINDINGS & PURPOSE.

1.1 **Title.** This Ordinance shall be known as “Susanville Indian Rancheria Exclusion Ordinance.”

1.2 **Findings.** The Tribal Business Council finds the following:

- (a) Persons visiting or residing on the Rancheria have engaged in conduct which threaten the safety and security of other Rancheria residents and persons visiting the Rancheria and their property, including threatening and assaulting vulnerable persons;
- (b) Persons visiting or residing on the Rancheria have engaged in loud and boisterous conduct under the influence of alcohol and Illegal Drugs which disturbs the peace and tranquility of the Rancheria;
- (c) Persons visiting or residing on the Rancheria have brandished and discharged firearms on the Rancheria in an unsafe and threatening manner;
- (d) Rancheria residents are often reluctant to speak out against persons who disturb the peace or threaten the physical safety of persons and property;
- (e) The foregoing conditions are detrimental to the physical and emotional well-being of the Tribe’s members, cause damage to real and personal property of the Tribe and its members, and lead to the general deterioration of living conditions on the Rancheria; and
- (f) The foregoing conditions justify extraordinary measures, including the exclusion of persons, to combat such conduct and to maintain the peace, safety, and security of the Rancheria.

1.3 **Purpose.** The Tribal Business Council enacts this Ordinance to establish a fair and uniform procedure for the removal and exclusion of persons who threaten the peace and security of the Rancheria, its residents, and their property.

1.4 Construction.

- (a) This Ordinance shall, in all events, be construed as consistent with the Tribe's obligations under the Indian Civil Rights Act, codified at 25 U.S.C. §§ 1301–1304, as may be amended from time to time.
- (b) Nothing herein shall be construed to waive the sovereign immunity of the Tribe, any political subdivision or enterprise thereof, or the official immunity of any Tribal official or employee.

1.5 Effective Date. This Ordinance shall be effective from and after its approval and adoption by the Tribal Business Council.

1.6 Prior Law Repealed. Ordinance No. 2010-002 Amendment 1, Ordinance of the Tribal Business Council of the Susanville Indian Rancheria Providing for the Exclusion of Persons from the Rancheria, is repealed and shall be without effect from and after the effective date of this Ordinance.

2. DEFINITIONS. The following terms, wherever used in this Ordinance, shall have the following meanings:

- 2.1 "Business Day"** means a day on which the offices of the Tribal government are open.
- 2.2 "Defendant"** means a person alleged to have committed an act warranting exclusion under this Ordinance.
- 2.3 "Dwelling"** means any physical structure or portion thereof primarily used as a residence.
- 2.4 "Exclusion Enforcement Officer"** means an officer of the Tribal Business Council charged with enforcing this Ordinance and orders issued under this Ordinance.
- 2.5 "Exclusion Hearing"** means a hearing to determine whether a Defendant committed an act warranting exclusion under this Ordinance.
- 2.6 "Exclusion Order"** means an order issued by the Tribal Business Council pursuant to Section 4.6 excluding a Defendant from the Rancheria.
- 2.7 "Excluded Person"** means any person subject to an Exclusion Order or Preliminary Exclusion Order.

- 2.8 “**Illegal Drug**” means any controlled substance within the meaning of the California Controlled Substances Act, codified at California Health & Safety Code, §§ 11000–11651, as may be amended from time to time, the sale or distribution of which is not authorized under Tribal law.
- 2.9 “**Notice of Hearing**” means the written notice issued by the Tribal Business Council pursuant to Section 4.1 informing the Defendant of an Exclusion Hearing.
- 2.10 “**Ordinance**” means this Susanville Indian Rancheria Exclusion Ordinance.
- 2.11 “**Personal Knowledge**” means knowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said.
- 2.12 “**Preliminary Exclusion Order**” means a preliminary order issued by the Tribal Business Council pursuant to Section 4.2 of this Ordinance excluding a Defendant from the Rancheria before an Exclusion Hearing is held.
- 2.13 “**Rancheria**” means all territory subject to the jurisdiction of the Tribe.
- 2.14 “**Section**” means a section of this Ordinance.
- 2.15 “**Tribal Business Council**” means the Tribal Business Council of the Susanville Indian Rancheria.
- 2.16 “**Tribe**” means the Susanville Indian Rancheria, a federally-recognized Indian tribe.
- 2.17 “**Witness Attendance Order**” means an order issued by the Tribal Business Council pursuant to Section 4.3(b) compelling a person who may provide relevant testimony and who is subject to the jurisdiction of the Tribe to attend and testify at an Exclusion Hearing.

3. **EXCLUSION; GROUNDS & EFFECT.**

- 3.1 **Grounds for Exclusion.** A person may be excluded from the Rancheria for committing any of the following on the Rancheria:
- (a) Sale or distribution of any Illegal Drug;
 - (b) Willfully causing physical harm to another person;
 - (c) Willfully damaging the real or personal property of another person or the Tribe;
 - (d) Threatening to cause physical harm to another person, including brandishing a firearm, whether loaded or unloaded, in a threatening manner;

- (e) Discharge of a firearm other than as expressly authorized under Tribal law;
- (f) Possession of a loaded firearm other than as expressly authorized under Tribal law;
- (g) Providing alcohol to a person under the age of 21 years;
- (h) Repeatedly or callously breaching the peace of the Rancheria, including by behaving in a loud or disruptive manner in the vicinity of a Dwelling after being asked to refrain from such behavior;
- (i) Violation of Section 3.2(b) of this Ordinance; and
- (j) Any other conduct which constitutes a material threat to the peace, safety, or security of Rancheria residents, guests, or real or personal property located on the Rancheria.

3.2 Effect of Exclusion.

- (a) No Excluded Person may enter or remain on any portion of the Rancheria, including any structure on the Rancheria, except as otherwise provided in an Exclusion Order.
- (b) No owner, occupant, landlord, or manager of a Dwelling on the Rancheria shall voluntarily and knowingly permit an Excluded Person to rent, lease, purchase, enter, occupy, or remain in such Dwelling, except as otherwise provided in an Exclusion Order.

4. EXCLUSION PROCEDURE.

4.1 Notice of Hearing.

- (a) Grounds; Timing; Contents. Upon a reasonable, good-faith belief that a Defendant has committed an act set forth in Section 3.1 within the past 365 days, the Tribal Business Council may issue and cause to be served on the Defendant a Notice of Hearing setting forth:
 - (i) The section(s) of this Ordinance that the Defendant allegedly violated;
 - (ii) The nature and circumstances of the alleged conduct warranting exclusion, including the date(s), time(s), and location(s) of the alleged conduct;
 - (iii) That the Defendant may be excluded from the Rancheria as a result of the Exclusion Hearing;
 - (iv) A mailing address where the Defendant may send any written notices or petitions required or allowed under this Ordinance;

- (v) The date(s) and time(s) of the Exclusion Hearing, which shall begin no less than 30 and no more than 90 days from the issuance of the Notice of Hearing and which shall be reasonably calculated to afford the Defendant a full and fair opportunity to prepare for and attend the Exclusion Hearing;
 - (vi) The address of the Tribal governmental building where the Exclusion Hearing will be held;
 - (vii) A web address where this Ordinance may be viewed;
 - (viii) That the Defendant has the right to receive a hard copy of this Ordinance upon written request;
 - (ix) That the Defendant has the right to inspect all physical or documentary evidence the Tribe intends to present at the Exclusion Hearing at a specified location, date, and time, no less than five Business Days before the Exclusion Hearing;
 - (x) That the Defendant has the right to be represented by a representative of his or her choice, at the Defendant's sole expense;
 - (xi) That the Defendant has the right to offer relevant evidence and call witnesses at the Exclusion Hearing in accordance with Section 4.3; and
 - (xii) That the Defendant has the right to compulsory process for obtaining the attendance of witnesses at the Exclusion Hearing as provided in Section 4.3.
- (b) *Timeframe for Service.* If service of a Notice of Hearing is not made on the Defendant at least 15 Business Days before the date provided for the Exclusion Hearing, the Notice of Hearing shall be without effect; provided, however, the Tribal Business Council may issue a new Notice of Hearing in accordance with Section 4.1(a).

4.2 Preliminary Exclusion Order.

- (a) *Grounds; Timing; Contents.* Upon a sworn statement based on Personal Knowledge that a Defendant engaged in conduct described in Sections 3.1(a), (b), (c), (d), (e), or (f) within the past 365 days and only if the Tribal Business Council finds a Defendant's continued presence on the Rancheria poses an immediate, material risk of harm to persons or property on the Rancheria, the Tribal Business Council may issue and cause to be served on the Defendant, along with a Notice of Hearing, a Preliminary Exclusion Order setting forth:
- (i) That the Defendant is excluded from the Rancheria or a specified portion thereof for a specified period of time, beginning no sooner than service of the Preliminary Exclusion Order on the Defendant and ending upon the Tribal Business Council's issuance of a decision under Section 4.6;

- (ii) A clear description of the geographic areas covered by the Preliminary Exclusion Order, with reference to conspicuous landmarks where possible;
 - (iii) That the Defendant may enter the Rancheria to inspect evidence as provided in Section 4.1(g), to attend the Exclusion Hearing, and as provided by any other exceptions to the Preliminary Exclusion Order;
 - (iv) Any conditions of the Defendant's right to inspect evidence, attend the Exclusion Hearing, or otherwise enter the Rancheria during the period of time covered by the Preliminary Exclusion Order; and
 - (v) That the Defendant has the right to petition the Tribal Business Council, in writing, to withdraw or modify the Preliminary Exclusion Order for good cause.
- (b) Petition for Withdraw or Modification. No later than five Business Days after being served with a Preliminary Exclusion Order, the Defendant may petition the Tribal Business Council, in writing, for a specified modification of or to withdraw a Preliminary Exclusion Order for good cause. Along with the petition, the Defendant shall include a mailing address where the Tribal Business Council may send notice of its decision on the petition.
- (c) Grounds for Granting or Denying Petition. In ruling on the petition, the Tribal Business Council shall consider:
- (i) The severity of the alleged conduct warranting exclusion;
 - (ii) The specific risk(s) posed by the alleged conduct warranting exclusion;
 - (iii) The frequency, timing, and duration of the alleged conduct warranting exclusion;
 - (iv) The location(s) of the alleged conduct warranting exclusion; and
 - (v) The risk of harm to persons or property on the Rancheria which would result from the withdrawal or modification of the Preliminary Exclusion Order.
- (d) Issuance of Decision on Petition. The Tribal Business Council shall issue written notice to the Defendant via U.S. mail, with Certificate of Mailing, of its decision to either grant or deny the petition within 10 Business Days of its receipt thereof. If the Tribal Business Council grants the petition, along with written notice of its decision, it shall issue a modified Preliminary Exclusion Order or order withdrawing the prior Preliminary Exclusion Order, as applicable.

4.3 Defendant's Witness List; Witness Attendance Order.

- (a) Defendant's Witness List; Request for Witness Attendance Order. No later than 15 Business Days before the Exclusion Hearing, the Defendant shall submit to the Tribal Business Council in writing a list of all persons the

Defendant intends on calling as witnesses at the Exclusion Hearing and any request(s) for a Witnesses Attendance Order. The Defendant's witness list shall clearly set forth, for each person the Defendant intends on calling as a witness:

- (i) Name, mailing address, and physical address;
- (ii) Relationship to the events at issue;
- (iii) Summary of anticipated testimony; and
- (iv) Whether the Defendant requests a Witness Attendance Order with respect to that person.

(b) Issuance of Witness Attendance Order; Grounds. No later than 10 Business Days before the Exclusion Hearing, the Tribal Business Council shall issue and cause to be served a Witness Attendance Order on any person who may provide relevant testimony, who is subject to the Tribe's jurisdiction, and whose attendance and testimony at the Exclusion Hearing is requested either by the Defendant pursuant to Section 4.3(a) or by the Tribe. A Witness Attendance Order shall set forth:

- (i) The date(s) and time(s) of the Exclusion Hearing;
- (ii) The address of the Tribal governmental building where the Exclusion Hearing will be held;
- (iii) That the addressee's attendance and testimony at the Exclusion Hearing is required pursuant to Tribal law; and
- (iv) That failure to attend the Exclusion Hearing may result in the imposition of a fine by the Tribal Business Council not to exceed \$500.

(c) Fine for Non-Compliance. The Tribal Business Council may, after written notice and opportunity to be heard, impose a fine of up to \$500 on any person who, absent extraordinary circumstances, fails to comply with an order issued under this Section 4.3.

4.4 Exclusion Hearing Procedure.

(a) Burden and Standard of Proof. At the Exclusion Hearing, the Tribe shall bear the burden of proving by clear and convincing evidence that the Defendant committed an act set forth in Section 3.1 within 365 days before the issuance of the Notice of Hearing.

(b) Defendant's Representation. The Defendant may represent himself or herself at the Exclusion Hearing or be represented by a representative of his or her choosing, at the Defendant's sole expense.

(c) Tribe's Representation. The Tribal Business Council may designate a representative to present evidence and question witnesses on the Tribe's behalf during the Exclusion Hearing.

- (d) Hearing Conduct. A quorum of the Tribal Business Council shall preside over the Exclusion Hearing and shall ensure that:
 - (i) The Defendant, if present, and the Tribe are each afforded reasonable and equal opportunity to present all relevant testimony and evidence;
 - (ii) The Defendant, if present, and the Tribe are each afforded reasonable and equal opportunity to cross-examine the other party's witnesses and examine the other party's evidence;
 - (iii) All witnesses swear or affirm to tell the truth before testifying;
 - (iv) The Defendant, if present, is afforded a reasonable opportunity to address the Tribal Business Council; and
 - (v) The hearing is otherwise conducted in a manner which comports with principles of fairness and due process.
- (e) Evidentiary Standard. The Tribe and the Defendant may present any relevant testimony and evidence at the Exclusion Hearing; provided, however, the Tribal Business Council may refuse to hear evidence that is unreliable or speculative, irrelevant, immaterial, or unfairly prejudicial.
- (f) Address for Notices. If the Defendant attends the Exclusion Hearing, he or she shall provide a mailing address where the Tribal Business Council may send notice of its decision and any resulting Exclusion Order.

4.5 Petition for New Hearing.

- (a) Grounds; Timing; Contents. Within five Business Days after the conclusion of the Exclusion Hearing, the Defendant may petition the Tribal Business Council for a new Exclusion Hearing, in writing, for one or more of the following reasons:
 - (i) The Defendant was unable to attend part or all of the Exclusion Hearing due to extraordinary circumstances, which shall be set forth in detail, and provides the earliest date(s) when the Defendant is able to attend a new Exclusion Hearing;
 - (ii) The Defendant was prejudiced by a failure of the Tribe to comply with this Ordinance; or
 - (iii) Misconduct by a witness, representative, or other participant denied the Defendant a fair and impartial hearing.

Along with the petition, the Defendant shall include a mailing address where the Tribal Business Council may send notice of its decision on the petition.

- (b) Grounds for Granting or Denying Petition. The Tribal Business Council shall grant the petition only if it finds a substantial likelihood one or more of the circumstances set forth in Section 4.5(a)(i)–(iii) occurred.

- (c) Issuance of Decision on Petition. The Tribal Business Council shall issue written notice to the Defendant via U.S. mail, with Certificate of Mailing, of its decision to either grant or deny the petition for a new hearing within 10 Business Days of its receipt thereof. If the Tribal Business Council grants the petition, the written notice shall also set forth:
- (i) The date(s) and time(s) of the new Exclusion Hearing, which shall be reasonably calculated to afford the Defendant a full and fair opportunity to prepare for and attend the new Exclusion Hearing in light of any relevant information provided in the petition; and
 - (ii) The address of the Tribal governmental building where the Exclusion Hearing will be held.

4.6 Decision & Order.

- (a) Grounds; Timing; Contents. Within 30 days after the conclusion of the Exclusion Hearing or new Exclusion Hearing, as applicable, the Tribal Business Council shall issue to the Defendant, via U.S. mail, with Certificate of Mailing, if Defendant attended the Exclusion Hearing, or personal service, if Defendant did not attend, a written decision setting forth:
- (i) The Tribal Business Council's decision to either exclude or decline to exclude the Defendant;
 - (ii) Findings of fact based solely on the evidence presented at the Exclusion Hearing which support the decision; and
 - (iii) Conclusions of law based on the standards set forth in this Ordinance which support the decision.
- (b) Exclusion Order Contents. If the Tribal Business Council decides to exclude the Defendant, along with the written decision, the Tribal Business Council shall issue an Exclusion Order setting forth:
- (i) That the Defendant is excluded from the Rancheria or a specified portion thereof for a specified period of time, which shall begin no sooner than the issuance of the Exclusion Order and which may be permanent;
 - (ii) A clear description of the geographic area(s) covered by the Exclusion Order, with reference to conspicuous landmarks where possible;
 - (iii) Any exceptions to the Defendant's exclusion from the Rancheria; and
 - (iv) Any conditions for withdrawal or modification of the Exclusion Order.

- (c) Exclusion Order Grounds. In determining the duration and geographic scope of an Exclusion Order, the Tribal Business Council shall consider the following:
 - (i) The severity of the conduct warranting exclusion;
 - (ii) The specific risk(s) posed by the conduct warranting exclusion;
 - (iii) The frequency, timing, and duration of the conduct warranting exclusion; and
 - (iv) The location(s) of the conduct warranting exclusion.

4.7 Service.

- (a) Manner of Service. A person of at least 18 years of age shall personally serve any notice or order required or permitted to be served under this Ordinance by:
 - (i) Delivering a copy to the addressee personally; or
 - (ii) Leaving a copy at the addressee's Dwelling with someone of suitable age and discretion who resides there; or
 - (iii) Delivering a copy to an agent authorized by appointment or by law to receive service of process on the addressee's behalf.
- (b) Sworn Statement. The person making service shall certify to the Tribal Business Council that service was made by sworn affidavit.

5. WITHDRAWAL OR MODIFICATION OF EXCLUSION ORDER.

- 5.1 Grounds; Timing; Contents.** No more frequently than once per year following the issuance of an Exclusion Order, an Excluded Person may petition the Tribal Business Council, in writing, for a specified modification of or to withdraw the Exclusion Order for good cause. Along with the petition, the Defendant shall include a mailing address where the Tribal Business Council may send notice of its decision on the petition.
- 5.2 Hearing; Investigation.** The Tribal Business Council may hold a hearing, request the production of documents or information from the Excluded Person, issue written questions to the Excluded Person, or take any other action it deems reasonably necessary to fully and fairly rule on the petition.
- 5.3 Grounds for Granting or Denying Petition.** In ruling on the petition, the Tribal Business Council shall consider:
 - (i) The severity of the conduct warranting exclusion;
 - (ii) The specific risk(s) posed by the conduct warranting exclusion;
 - (iii) The frequency, timing, and duration of the conduct warranting exclusion;
 - (iv) The location(s) of the conduct warranting exclusion; and

- (v) The risk of harm to persons or property on the Rancheria which would result from the withdrawal or modification of the Exclusion Order.

5.4. Decision. The Tribal Business Council shall issue a written notice to the Excluded Person via U.S. mail, with Certificate of Mailing, of its decision to either grant or deny the petition within 90 days of its receipt thereof, unless the Excluded Person agrees to a longer period of time. If the Tribal Business Council grants the petition, along with the written notice, the Tribal Business Council shall also issue a modified Exclusion Order or order withdrawing the prior Exclusion Order, as applicable.

6. Publication of Exclusion Order. Within five Business Days of the issuance, modification, or withdrawal of an Exclusion Order or Preliminary Exclusion Order, the Tribal Business Council shall provide public notice of the same by the following means:

- 6.1 Posting notice for a period of at least 30 days at Tribal governmental offices, Tribally-owned enterprises, and Tribally-owned Dwellings;
- 6.2 Posting notice to a website maintained by the Tribe;
- 6.3 Mailing notice to tenants in Tribally-owned Dwellings;
- 6.4 Mailing notice to the Lassen County Sheriff's Department; and
- 6.5 Mailing notice to the City of Susanville Police Department.

7. ENFORCEMENT.

7.1 Appointment of Officers. The Tribal Business Council may, from time to time, appoint such Exclusion Enforcement Officers as it deems necessary to enforce the provisions of this Ordinance.

7.2 Manner of Conduct. At all times while performing duties under this Ordinance, Exclusion Enforcement Officers shall:

- (a) Conduct themselves in a safe and professional manner.

7.3 Duties. The duties of Exclusion Enforcement Officers shall include, as directed by the Tribal Business Council:

- (a) Escorting Excluded Persons off of portions of the Rancheria covered by an Exclusion Order, using only as much force as is reasonably necessary for such exclusion;
- (b) Monitoring and escorting Defendants and Excluded Persons in the exercise of their rights under Sections 4.1(a)(ix) and 4.2(a)(iii);

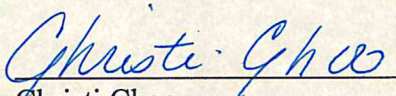
- (c) Posting public notices as required or permitted by this Ordinance; and
- (d) Entering Dwellings and other private areas to catalogue and remove the personal property of Excluded Persons left on the Rancheria, exercising ordinary and reasonable care to avoid damage to possessions.

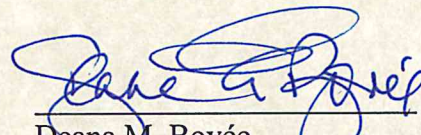
NOTE: The Susanville Police Department or the Lassen County Sheriff's Department, as appropriate, shall be called for a "civil stand by" when people are escorted off the Rancheria or if there are any anticipated problems.

CERTIFICATION

We hereby certify that the Susanville Indian Rancheria Exclusion Ordinance was adopted by the Susanville Indian Rancheria Tribal Business Council at a duly called meeting held April 16, 2019 with a vote of 5 Yes, 0 No, 0 Abstained.

ATTEST;


Christi Choo
Secretary/Treasurer


Deana M. Bovée
Tribal Chairwoman