

MORONGO BAND OF MISSION INDIANS

ORDINANCE 9

NUISANCE ORDINANCE

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NUISANCE ORDINANCE

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THE MORONGO BAND OF MISSION INDIANS

NUISANCE ORDINANCE

I. Findings

The Morongo Band of Mission Indians, a federally-recognized Indian tribe exercising inherent sovereignty and jurisdiction over the Morongo Indian Reservation, finds that individuals living on, visiting, or doing business within the exterior boundaries of the Reservation at times engage in acts that constitute a nuisance and/or threaten or result in harm to the Tribe's property and resources, and to the health, environment, welfare and safety of Tribal Members and Reservation residents. It is therefore necessary to establish a procedure by which the Tribe can take immediate action to abate the nuisance and avoid harm to the Tribe, its members, its resources, and to Reservation residents, pending any further resolution of the problem through judicial or federal agency action.

II. Purpose

The Morongo Band of Mission Indians, as the beneficial owner of the Morongo Indian Reservation, and acting pursuant to Tribal law, custom and tradition, hereby exercises its inherent sovereign power to regulate and restrain the on-Reservation activities of persons that constitute a nuisance or that threaten the security or resources of the Tribe, or the health, safety and welfare of Tribal members and Reservation residents.

III. Definitions

- A. The term "Tribe" or "Band" means the Morongo Band of Mission Indians.
- B. The term "Morongo Tribal Council" or "Tribal Council" means the elected governing body of the Tribe (formerly known as the Business Committee) as established and defined by Morongo custom and tradition and Tribal Law.
- C. The term "non-member" means any person who is not an enrolled member of the Band.
- D. The term "Nuisance" means any act or behavior that is not expressly authorized by the Tribe and that is: (1) injurious to human or animal health; (2) offensive to the senses (e.g., results in offensive smells, sights or sounds); (3) an interference with the comfortable enjoyment of life or lands or property within the Reservation; (4) damaging or potentially damaging to Reservation lands or resources; (5) a violation of federal or California criminal laws; or (6) a violation of any of the laws, customs, or traditions of the Tribe. A Nuisance may be a private nuisance if it affects only one person or family, or a public nuisance if affects a number of persons or families or the Tribe as a whole.
- E. The term "Reservation" means all the lands within the exterior boundaries of the Morongo Indian Reservation.
- F. The term "Tribal Member" means a person who is an enrolled member of the Band.

- G. The term “Complainant” means a Tribal Member who files a complaint alleging that someone has engaged in behavior creating and/or maintaining a Nuisance.
- H. The term “Violator” means a person who has been found by the Morongo Tribal Court to have acted in a manner that created or maintains a Nuisance. A person accused or suspected of being a Violator but who has not been adjudicated to have created or maintained a Nuisance shall be an “Alleged Violator” or “Suspect.”
- I. The term “Responsible Tribal Member” means a Tribal Member who has invited or enabled a non-member Violator to enter the Reservation and create a Nuisance, or who has allowed a non-member Violator to stay on the Reservation or enter the Reservation after the Tribal Member has been notified that the non-member has been alleged to have created a Nuisance.

IV. Complaint; Investigation; Report

- A. Any Tribal Member may cause an investigation of an alleged Nuisance to be initiated by filing with the Morongo Reservation Patrol (“MRP”) a written complaint on a form approved by the Tribal Council.
- B. Upon receipt of a completed written complaint, MRP promptly shall take steps to investigate the facts alleged in the complaint.
 - 1. The Complainant must cooperate with MRP and, if deemed necessary by MRP, allow MRP to enter upon the Complainant’s property in order to take photographs of the alleged Nuisance and otherwise document the existence and impact of the alleged Nuisance.
 - 2. An Alleged Violator shall not be required to allow MRP to enter upon his/her property to investigate the complaint. However, the fact that an Alleged Violator refuses to allow MRP to enter his/her property to investigate shall be included in MRP’s investigation report and may be taken into consideration in MRP’s determination of whether the evidence warrants the issuance of a citation to the Suspect and/or the adjudication of the complaint.
 - 3. If the Alleged Violator is a non-member, the investigation should seek to identify each person who may be a Responsible Tribal Member.
- C. Not more than thirty (30) days after receipt of a complaint, MRP shall complete its investigation and prepare a written report detailing the results of the investigation.
 - 1. If MRP concludes that the evidence as reflected in the report warrants the issuance of a citation, MRP shall issue a citation to the Alleged Violator.
 - a. If MRP concludes that the evidence warrants citing more than one individual, MRP shall issue a separate citation to each Alleged Violator.
 - 2. A copy of any citation issued by MRP shall be filed with the Morongo Tribal Court (“Court”) immediately after the citation is issued. Along with a copy of the citation, MRP also shall provide the Court with a copy of the investigation report.

3. The citation shall include a brief statement of the facts causing MRP to conclude that the Alleged Violator has created and/or is maintaining a Nuisance. This statement shall NOT identify the Complainant.
 4. Upon issuance of a citation, MRP shall take all reasonable steps necessary to serve the Alleged Violator and any person identified as a potential Responsible Tribal Member with a copy of that citation as soon as possible. Service of a citation may be made in any manner that results in actual notice to the Alleged Violator and any person identified as a potential Responsible Tribal Member that a citation has been issued, including hand-delivery, mail (certified mail, return receipt requested), delivery using a service that requires a signed receipt, or by any other means of service that results in actual notice.
 - a. If an Alleged Violator (or person identified as a potential Responsible Tribal Member) receives a copy of the citation by any means, such receipt shall be deemed to constitute effective notice to that individual of the citation.
 5. No less than one (1) business day following service (if effected in person by MRP) or after MRP receives written confirmation that service of a citation has been effected, MRP shall file with the Morongo Tribal Court a “proof of service” to which is attached either a certificate of service signed by the individual who effected service or the written confirmation received by MRP from the U.S. Postal Service or other delivery service.
- D. Regardless of whether a citation is issued, MRP shall provide to the Tribal Council a copy of the investigation report.
1. If MRP decides not to issue a citation, along with the copy of the investigation report MRP shall provide to the Tribal Council a brief statement setting forth all of the reason(s) for MRP’s decision not to issue a citation.
- E. Notwithstanding anything in this Ordinance to the contrary, upon the application of a Tribal Member the Tribal Council shall have the authority to issue a temporary Order of Exclusion, the duration of which shall not exceed ninety (90) days, excluding from the Reservation any non-member whose conduct the Council concludes may be found by the Morongo Tribal Court to have constituted a Nuisance.

V. Scheduling of a Hearing

- A. Upon receipt of a citation, the Court shall initiate an enforcement proceeding pursuant to the Morongo Tribal Court Rules of Court then in effect (“Morongo Rules of Court”). Upon receipt of proof of delivery of the citation directly to the Alleged Violator and any person identified as a potential Responsible Tribal Member, or to each such person’s address of record (which, in the case of a Tribal Member, shall be the Tribal Member’s address on file with the Morongo Finance Department), the Court will schedule an evidentiary hearing to take place no sooner than ten (10) and no later than thirty (30) business days after the Court sends notice of the hearing to the Alleged Violator, any person identified as a potential Responsible Tribal Member, MRP, and the Tribe’s General Counsel.

1. Notice of the date, time and place of the hearing may be provided by any means deemed by the Court to be practical, including email, fax, certified mail, or other form of delivery that provides a means to determine whether the notice has been delivered to the Alleged Violator or the Alleged Violator's address of record, any person identified as a Responsible Tribal Member or his/her address of record, and to MRP and the Tribe's General Counsel.
 2. In addition to providing notice of the date, time and place of hearing, the notice must inform all parties that the hearing will be conducted pursuant to the Morongo Rules of Court, and that each party will be afforded the opportunity to present testimony (including the testimony of a third party witness) as well as other evidence (reports, video, photographs, etc.) in support of that party's position.
- B. Notwithstanding the scheduling of a hearing, the Morongo Tribal Court Judge ("Judge") shall conduct a review of each citation and investigation report prior to any hearing to determine whether the investigation report establishes probable cause to believe that the Alleged Violator created a Nuisance in violation of this Ordinance.
1. If the Judge determines prior to a scheduled hearing that the investigation report does not establish probable cause to believe that the Alleged Violator created a Nuisance in violation of this Ordinance, then the Judge shall dismiss the citation and the Clerk of the Court shall notify the parties that the hearing has been canceled.

VI. Conduct Of Hearing; Decision Of The Court

- A. The Judge will conduct the hearing in a manner consistent with the Morongo Rules of Court then in effect.
- B. After the hearing has been completed in accordance with the Morongo Rules of Court, the Judge shall decide, based on the investigation report, the exhibits thereto, and the other evidence (if any) admitted by the Court during the hearing, whether the Alleged Violator has created a Nuisance in violation of this Ordinance.
 1. If the Judge decides that the Alleged Violator has not created a Nuisance, the Court shall dismiss the citation.
 2. If the Judge decides that the Alleged Violator has created a Nuisance in violation of this Ordinance, the Judge shall impose sanctions on the Violator in accordance with Section VII below.
- C. If a person has been identified as a potential Responsible Tribal Member and has been notified of the hearing in accordance with the requirements of this Ordinance, the Judge also shall decide whether such person is a Responsible Tribal Member, and if so, the Judge shall impose sanctions on that Responsible Tribal Member in accordance with Section VII below.

VII. Imposition Of Civil Sanctions

- A. Once the Court has concluded that a Violator has created a Nuisance, the Court may do one or more of the following to sanction the Violator and/or cause the Nuisance to be abated:
1. Impose a fine commensurate with the harm caused by the Nuisance for the purpose of serving as a deterrent to reduce the risk of others creating a similar Nuisance.
 - (a) If the Violator is not a Tribal Member, an order requiring payment of a fine may include a provision excluding the Violator from all or any portion(s) of the Reservation until such time as payment has been made.
 - (b) If the Violator is a Tribal Member, an order requiring payment of a fine may include a provision authorizing the amount of the fine to be withheld from the Tribal Member's future per capita and other distributions if the fine is not timely paid.
 2. Order the Violator to abate the Nuisance, if necessary by removing or destroying the thing(s) causing the Nuisance, and authorizing the Tribe to do so at the Violator's expense if the Violator fails to comply within a reasonable period of time as set forth in the order.
 - (a) If the Violator is not a Tribal Member, the order may include a provision excluding the Violator from all or any portion(s) of the Reservation until such time as the Nuisance has been abated or until such time as the Violator has reimbursed the Tribe for the cost of abatement if the Violator does not timely abate the Nuisance and the Tribe therefore incurs the cost of abating the Nuisance.
 - (b) If the Violator is a Tribal Member, the order may include a provision authorizing the Tribe to withhold from the Tribal Member's future per capita and other distributions such amount(s) as may be necessary to reimburse the Tribe for the cost of abatement if the Violator does not timely abate the Nuisance and the Tribe therefore incurs the cost of abating the Nuisance, if the reimbursement is not timely paid.
 3. Order the Tribe to seize and impound any equipment, vehicle(s), or other thing(s) on the Reservation causing the Nuisance until such time as such thing(s) are removed from the Reservation by the owner or the presence of such thing(s) on the Reservation no longer is likely to constitute a Nuisance.
 4. Order the Violator to reimburse the Tribe and/or any resident(s) of the Reservation for any harm or any monetary damages caused by the Nuisance.
 - (a) If the Violator is not a Tribal Member, an order requiring reimbursement may include a provision excluding the Violator from all or any portion(s) of the Reservation until such time as payment has been made.

- (b) If the Violator is a Tribal Member, an order requiring reimbursement may include a provision authorizing the reimbursement amount to be withheld from the Tribal Member's future per capita and other distributions if the reimbursement is not timely paid.
5. Order the Tribe's Water Department, Public Works Department, and/or Information Technology Department to reduce services or stop providing services to the address where a continuing Nuisance is located until such time as the Nuisance is abated.
 6. Order that the Violator be excluded from the Reservation, or that the Violator's access to the Reservation be restricted:
 - (a) until the Nuisance is abated;
 - (b) for a specified period of time or a specified period of time after the Nuisance has been abated;
 - (c) until such time as the Violator petitions the Court for relief from the order of exclusion and the Court grants relief; or
 - (d) if the violator is not a Tribal Member, permanently.
 - B. The available sanctions that may be imposed on a Responsible Tribal Member who is not a participant in the creation or maintenance of a Nuisance shall be the same as the sanctions that may be imposed on a Violator.
 - C. The Court shall issue a written Judgment setting forth the Court's findings regarding the Violator's creation of a Nuisance and the sanction(s) imposed by the Court.

VIII. Finality; Appeal

- A. The Court's judgment may be appealed in the manner set forth in the Morongo Rules of Court.

IX. Litigation and Agency Action

- A. Nothing in this Ordinance precludes the Tribal Council from initiating litigation in an appropriate state or federal court at any time, or from initiating any appropriate review by a federal agency. The initiation of such litigation or agency review does not preclude any of the remedies described herein.

X. Severability

- A. The provisions of this Ordinance are severable. If any part or provision hereof is held void by tribal or federal court or federal agency, the decision of the court or agency so holding shall not affect or impair any remaining provision of the Ordinance.

XI. Superseding Effect

- A. To the extent that any Ordinance or ballot proposition previously approved by the General Membership is inconsistent with the provisions of this Ordinance, such

previous enactment shall be deemed to have been superseded and the provisions of this Ordinance shall be controlling.

CERTIFICATION

This is to certify that the foregoing revised Ordinance was adopted on May 4, 2016, at a duly held election of the General Membership of the Morongo Band of Mission Indians, by a vote of 157 in favor, 86 opposed and 0 abstaining.

Dated: May 4, 2016

Karen Hogan

Executive Recording Secretary