

BISHOP PAIUTE TRIBE

TRESPASS ORDINANCE NO. 2002

101. Findings; Declarations of Policy

The Bishop Tribal Council (Tribal Council), as the federally recognized governing body for the Bishop Paiute Tribe (Tribe), after careful review, has determined that there is a need for Tribal governmental regulations in the areas dealing with trespass to both Tribal property and individual assignments.

The Tribal Council, pursuant to its inherent sovereignty, exercises its authority in providing for a comprehensive regulation of trespass issues.

102. Declarations of Policy

It is the policy of this ordinance to promote the general health, safety and welfare of all residents of the Bishop Paiute Reservation and, in furtherance of the sovereign right of self-governance of the Tribe, the Tribal Council declares its commitment to the establishment and maintenance of rules and regulations covering the subject matter of this ordinance.

103. Definition of Trespass

Trespass is defined as every wrongful entry on real property in the occupation or possession of another. This includes both Tribal and individual assignments.

- (1) Entry upon the premises of another, including any Tribal property, in violation of a notice posted on the premises, or in violation of any notice, warning or protest given orally or in writing by any owner or legal occupant; or
- (2) Failure to depart from the premises of another if requested by any owner or legal occupant thereof.
- (3) Any person or entity causing or creating a trespass as herein defined is guilty of a violation of this ordinance.
- (4) Nothing which is done or maintained under the express authority of an ordinance or lawful permit or license issued by the Bishop Tribal Council shall be a trespass.

104. Authorized Official

An authorized official means any person or persons designated and empowered by the Bishop Tribal Council to enforce the provisions of this ordinance.

- (1) Citation for Civil Infraction. If an authorized official determines that a trespass has occurred, that official may sign and serve on the persons alleged responsible for a violation of this Ordinance a written citation that contains a notice to appear in Tribal Court, the name and address of the person who is accused, a description of the alleged violation, the time and place where and when the person shall appear in Tribal Court, and such other pertinent information as may be necessary.¹ If the citation includes information whose truthfulness is attested to as required under the general laws of this Tribe, then the complaint, when filed with the Tribal Court by the authorized official, shall be deemed to be a certified complaint.
- (2) Service of Citation. A civil infraction citation for a violation of this Ordinance may be served in any of the following ways:
- (A) By personal service thereof on the person determined responsible for the violation. a copy of the citation signed by the person shall suffice as proof of service.
 - (B) By mailing the notice by certified mail, return receipt requested, to the responsible person at his or her last known address.
 - (C) By posting the notice in a conspicuous place on the offending property; provided however that service by posting shall only be used when the authorized official cannot determine the last known address of the person.
- (3) Alternative Remedies. At the discretion of an authorized official, or the Tribal Council, the following remedies may be pursued:
- (A) Action in the Tribal Court for a temporary restraining order and injunctive relief, including an order to abate trespass; or
 - (B) Action in the Tribal Court for the prescribed civil penalty; or
 - (C) Action in the Tribal Court for money damages; or
 - (D) A combination of any or all of the above.
- (4) Emergency Action. If an authorized official determines that a trespass has occurred and may present an imminent and substantial threat to the health, safety, peace or environment of the community, the authorized official may take such actions as may be necessary to protect the interests governed by this Ordinance. Before an authorized official may take emergency action in the form of request for a temporary restraining order or injunction, a citation for violation of this Ordinance must be served on the alleged responsible party(ies) in accordance with Sections 1 and 2.

¹ Until a Tribal court is established, the Tribal council shall act as the Tribal Court
ENVIRONMENTAL TRESSPASS ENVIRONMENTAL NEW

- (5) Order to Abate and Other Remedies. If an action brought under this Ordinance seeks to abate the continued trespassing or other remedy, and the Court finds by a preponderance of the evidence a violation of this Ordinance, the Court shall enter an order directing that the continued trespass be abated, or such other proper remedy as set out in Section 3 above.
- (6) Enforcement of orders to abate. All orders entered by the Court directing that a trespass nuisance be abated shall be carried out by an authorized official. The authorized official shall give notice to the violator and to any person who has trespassed or is threatening to continue trespassing. If the trespassing not voluntarily abated, the authorized official shall cause the trespassing to be abated. The authorized official shall have the authority to authorize any and all action necessary to abate the trespassing in accordance with the court order. In the event abatement of the trespass requires contract services, a fifteen percent (15%) administrative fee shall be added to the contract price of abating the trespass. All abatement costs shall may be collected by the Tribe by all appropriate remedies, including termination of Tribal services.
- (7) Civil Penalty. The violation of any provision of this Ordinance shall be a civil infraction punishable by a fine not exceeding FIVE THOUSAND DOLLARS (\$5,000.00) for each violation. A civil infraction is not a crime and shall not subject a person to criminal punishment. The fines imposed under this section are intended as a remedial measure designed to compensate for the harm caused by the violation of this Ordinance regardless of the fact that the quantum of damage in some cases may be incapable of precise measurement. This section is also designed to provide a means to fund the administration and enforcement of this Ordinance and compensate any individuals injured by the conduct of the violator. In addition, Tribal services and access to the Bishop Paiute Reservation may be terminated pending compliance with this Ordinance by the violator.
- (8) Money Damages for Violation. Any person who violates any provision of this Ordinance shall be strictly liable for all damages resulting from such violation, in addition to any civil fine set out in section 7. The Tribe or individual members of the Tribal community may bring suit in the Tribal Court for damages they have incurred as a result of the trespass. The Court may order money damages, injunctive relief, costs of the suit, and attorney's fees to the prevailing party (see section 3). If liability is established and the Court orders restoration of the area affected, the Court shall make provision to assure that restoration is accomplished within a reasonable time and at the sole expense of the violator.
- (9) Separate Offense. Each day any violation of any provision of this Ordinance shall constitute a separate offense.
- (10) Tribal Immunity. Nothing in this ordinance is a waiver of the sovereign immunity of the Tribe or the Tribal Council or any official, agent or employee of the Tribe while acting in his or her official capacity. The employees and appointees of the Tribe, the members of the Tribal Council, and the personnel of the Tribal Court are cloaked with the sovereign

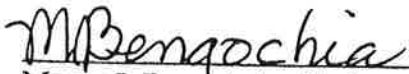
the Tribal Council, and the personnel of the Tribal Court are cloaked with the sovereign immunity of the Tribe. No person named above shall be liable for his or her acts or failure to act under this Ordinance.

- (11) Severability. If any provision of this Ordinance or its application to any person, entity or circumstance is held to be invalid, the remainder of the Ordinance shall not be affected.
- (12) Amendments. This Ordinance and the procedures promulgated hereunder may be amended or rescinded by the Tribal Council at a duly called regular or special called meeting.
- (13) Effective Date. This Ordinance shall be effective from the date of its approval by the Tribal Council.

CERTIFICATION

The foregoing Ordinance was passed at a duly called meeting of the Bishop Tribal Council held on the 18th day of **September, 2000** with a quorum present and voting **4 AYES, 0 NAYS, 0 ABSTAINING, and 0 ABSENT.**

**BISHOP TRIBAL COUNCIL
ATTEST:**




Monty J. Bengochia, Chairman




Donna Vasquez, Tribal Council Member



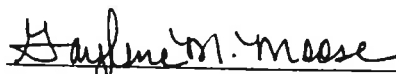
Ronald Barr, Tribal Council Member



Doug Vega, Vice Chairman



Karrina Stone, Tribal Council Member



Gaylene M. Moose, Tribal Secretary

Date: September 18, 2000